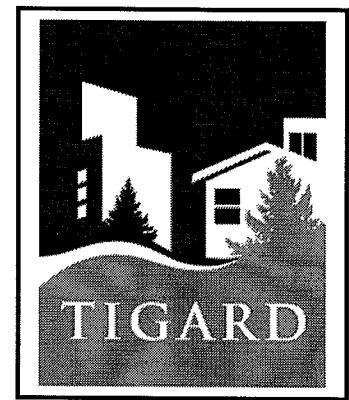




TIGARD CITY COUNCIL
MEETING

FEBRUARY 13, 2007 6:30 p.m.

TIGARD CITY HALL
13125 SW HALL BLVD
TIGARD, OR 97223



PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

A G E N D A

TIGARD CITY COUNCIL MEETING

6:30 PM

- STUDY SESSION

- > Tigard Municipal Code Amendment Discussion regarding Solid Waste Management – Public Works Staff
- > Burnham Street Update – Community Development Staff
- > FY 07-08 Council Training – City Administration

- EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss real property transaction negotiations under ORS 192.660(2) (e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

1. BUSINESS MEETING

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports
- 1.5 Call to Council and Staff for Non-Agenda Items

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)

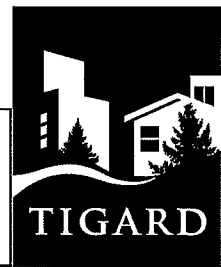
- Tigard High School Student Envoy Jasmina Disdarevik
- Follow-up to Previous Citizen Communication

3. CONSENT AGENDA: *These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:*

- 3.1 Approve Council Minutes for January 9, 2007
- 3.2 Receive and File:
 - 3.2.a November 14, 2006 Minutes of Joint Council Meeting with Lake Oswego
 - 3.2.b January 30, 2007 Fifth Tuesday Meeting Notes
 - 3.2.c Council Calendar
 - 3.2.d Tentative Agenda

- 3.3 Approve an Intergovernmental Agreement with Clean Water Services for the Preparation of a Sanitary Sewer Master Plan
- 3.4 Approve Budget Amendment #12 for Sewer Master Plan Project Additional Funding
- 3.5 Commend the Members of the Planned Development Code Review Committee for their Service and to Disband the Committee
- 3.6 Authorize the Mayor to Renew a West Nile Virus Intergovernmental Agreement with Washington County
- 3.7 Authorize the City Manager to sign a Settlement Agreement with the Business Software Alliance (BSA)
4. ANNEXATION POLICY DISCUSSION
 - Staff Report: Community Development Staff
5. COUNCIL LIAISON REPORTS
6. NON AGENDA ITEMS
7. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
8. ADJOURNMENT

Agenda Item No. 3.1
For Agenda of Feb. 13, 2007



Tigard City Council Meeting Minutes

Date: January 9, 2007
Time: 7:31 p.m.
Place: Tigard City Hall, 13125 SW Hall Boulevard
Tigard, Oregon
Attending: Mayor Craig Dirksen Presiding
Councilor Gretchen Buehner
Councilor Sally Harding
Councilor Sydney Sherwood
Councilor Tom Woodruff
Absent: --

Agenda Item	Discussion & Comments	Action Items (follow up)
Business Meeting	<p>1.1 Mayor Dirksen called the City Council and the Local Contract Review Board to order at 7:31 p.m.</p> <p>1.2 Council Present: Mayor Dirksen, Councilors Buehner, Harding, Sherwood, and Woodruff.</p> <p>1.3 Pledge of Allegiance</p> <p>1.4 Council Communications & Liaison Reports: None</p> <p>1.5 Call to Council and Staff for Non-Agenda Items: City Manager Prosser advised there were several administrative items listed for Council review (See Agenda Item No. 9)</p>	
2. Oath of Office Ceremony	<p>Municipal Court Judge Michael O'Brien administered oaths of office to the following:</p> <ul style="list-style-type: none">♦ Mayor Craig Dirksen♦ Councilor Gretchen Buehner♦ Councilor Sydney Sherwood	

Agenda Item	Discussion & Comments	Action Items (follow up)
<p>3. Presentation in Appreciation for Years of Service to the City of Tigard to Former Councilor Nick Wilson (January 1, 2003, to December 31, 2006)</p>	<p>Mayor Dirksen presented to former Councilor Wilson a framed and engraved pictorial review of projects and events that occurred during Councilor Wilson's tenure.</p> <p>Former Councilor Wilson offered a few remarks on public service and urged people to be active and involved in the community. When he hears someone saying "they" should do something to make life better in the community, people should recognize that we <i>all</i> are "they." He referred to individuals who stepped up to represent their interests and recognized the activism on the part of John Frewing for his conservation efforts and Lisa Hamilton-Treick and Dick Franzke who very nearly formed their own City in an effort to make their community better.</p> <p>Former Councilor Wilson referred to a number of projects that took place while he was on City Council including the formation of the downtown urban renewal district and, while not as much progress was made as he had hoped on 99W, one project was completed. He noted more could be done if the gas tax recently approved by the City Council is sustained should the ordinance be referred to the voters.</p> <p>Councilor Woodruff said that Councilor Wilson was a good example of what a Councilor should be. Councilor Sherwood recalled some memorable times with Councilor Wilson as they started their Council terms together and she said it will be difficult not to have him serving again. Mayor Dirksen again thanked Councilor Wilson and added that "we will be asking for your help" on some upcoming City projects.</p>	
<p>4. Inaugural Remarks</p>	<p>Mayor Dirksen: Thanked the citizens for his reelection and for the reelection of Councilor Sherwood and the election of Councilor Buehner. He said that being reelected, he hoped, indicated some tacit approval of the past actions of the City Council. He noted he would be giving a State of the City address later in the meeting outlining some of</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>the plans the City Council has for the City of Tigard. He concluded by thanking his family and friends for their support.</p> <p><u>Councilor Buehner:</u> She thanked the voters for electing her and said she has been involved with the City of Tigard for about ten years beginning her service on the Vision Task Force. She noted issues for the City including the impacts of growth and transportation planning. She referred to her service as a Planning Commissioner and said she was glad the Comprehensive Plan update was underway and she looks forward to implementing the revised Plan. Councilor Buehner also served on the Downtown Task Force as the representative from the Planning Commission and she looks forward to her service on City Council when it is time to consider implementing the policies and recommendations of the Task Force. She referred to work done by the Transportation Financial Strategies Task Force, which she chaired. The Task Force recently finished a review about how to go about alleviating the congestion on 99W and recommended that City Council pass a gas tax to finance a project at Greenburg Road/99W. She said she hopes the gas tax is upheld. Councilor Buehner concluded her remarks by thanking her family, friends and business associates for their support.</p> <p><u>Councilor Sherwood:</u> She said she had not intended to run for another term of office, but she was persuaded to serve for a second term when there were so few candidates who came forward. She said she loves this City, which has been her home for the last 35 years. She said former Councilor Wilson's experience will be missed on the Council. It takes a lot of patience to serve on the City Council because everything takes years to accomplish. She noted she was looking forward to continued progress on the Comprehensive Plan update and the downtown urban renewal. She thanked her family for their support.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
5. Elect Council President	<p>Mayor Dirksen announced it was now time to elect the Council President to serve for the next two years.</p> <p>The Tigard City Charter states: At its first meeting of each odd-numbered year, the council by ballot shall choose a president from its membership. In the mayor's absence from a council meeting, the president shall perform the duties of the office of mayor and preside over it. Whenever the mayor is physically or mentally unable to perform the functions of office, the president shall act as the mayor pro tem.</p>	<p>Councilor Woodruff nominated Councilor Sherwood for Council President. Councilor Buehner seconded the nomination.</p> <p>The City Council members marked their ballots and gave them to the City Recorder. All City Council members present voted for Councilor Sherwood, who will serve as Council President from January 9, 2007 to December 31, 2008.</p>
6. Citizen Communication	<p>➤ Tigard High School Student Envoy Jasmina Dizdarevik presented a City Council Student Report. A copy of her report is on file in the City Recorder's office.</p> <p>➤ Follow-up to previous Citizen Communications: City Manager Prosser advised that on December 19, 2006, Mr. Kevin Saier noted concerns about the possibility of a residential homeowner constructing a tower or antenna structure of any height on residential property. A Director's Interpretation was issued that addresses Mr. Saier's concerns. Community Development Director Coffee contacted Mr. Saier.</p>	
7. Consent Agenda	<p>Mayor Dirksen reviewed the following Consent Agenda:</p> <p>7.1 Approve Council Minutes for November 28 and December 11, 2006</p> <p>7.2 Receive and File:</p> <p>a. Council Calendar</p> <p>b. Council Meeting Tentative Agenda</p> <p>7.3 Appoint Budget Committee Members – Resolution No. 07-01</p> <p>7.4 Local Contract Review Board: Award of Contract for Architect/Engineer/Construction Manager of Record</p>	<p>Motion by Councilor Harding, seconded by Councilor Sherwood, to approve the Consent Agenda.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen Yes</p> <p>Councilor Buehner Yes</p> <p>Councilor Harding Yes</p> <p>Councilor Sherwood Yes</p> <p>Councilor Woodruff Yes</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
8. State of the City Address	Mayor Dirksen delivered the 2007 State of the City Address. A copy of his speech is attached and marked as "Attachment A."	
9. Non Agenda Items	<p>> Administrative Items:</p> <ul style="list-style-type: none"> ◆ Mayor Dirksen will be serving as the liaison to the Washington County Coordinating Committee ◆ City Council Liaison Assignments to Boards, Committees and Task Forces. The following assignments were decided upon: <ul style="list-style-type: none"> ○ Budget Committee – All of City Council are members of the Budget Committee ○ Building Appeals Board – No liaison; this Board meets infrequently ○ City Center Advisory Commission – Councilor Sherwood ○ Fanno Creek Master Plan Steering Committee -- Councilor Sherwood ○ Committee for Citizen Involvement – Mayor Dirksen ○ Highway 99W Citizen Advisory Committee – Councilor Buehner ○ Library Board – Councilor Harding ○ Parks and Recreation Advisory Board – Councilor Woodruff ○ Planning Commission – Councilor Buehner ○ Tigard Youth Advisory Council – Councilor Harding ○ Transportation Financing Strategies Task Force – Councilor Buehner ○ Tree Board – Councilor Harding ◆ City Manager Prosser announced that Mayor Dirksen had edited the City Council goals. Councilor Harding advised she also had changes she would send to City Manager Prosser. ◆ City Council will select a date next week for the team building meeting with consultant Joe Hertzberg. ◆ Mayor Dirksen announced he would be out of town the week of February 5. ◆ In response to an inquiry from Councilor Buehner, City Manager Prosser advised that Planning Commission and City Center 	

Agenda Item	Discussion & Comments	Action Items (follow up)
	Advisory Commission appointments are scheduled on the January 23, 2007, City Council agenda.	
Adjournment	Meeting adjourned at 8:22 p.m.	<p>Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adjourn the meeting.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen Yes Councilor Buehner Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Woodruff Yes</p>

Attest:

Catherine Wheatley, City Recorder

Mayor, City of Tigard

Date: _____

State of the City

January, 2007

It's been three years since I was appointed Mayor after the death of Jim Griffith, and six years since I was first elected to city council. At that time I told voters that the only real issue we had was growth. All our other issues were just the result of growth, whether it be land use, or economic vitality, or transportation, or whatever, it was really all about growth. I said that if I had my preference, we would turn Tigard back to the way it was 20 years ago, and keep it that way, but we needed to realize, that wasn't a realistic attitude. And I said that it wouldn't do any good to hate growth, or try to ignore it, or try to stop it. The population of the United States has grown from 200 million people to 300 million just since 1967, and today we are told that the population of the Portland area is going to increase by another one million people over the next 25 years. And I said, that growth was going to happen regardless of how we felt about it, and our only real choice was either to work to manage it and use it to our advantage or to stand by and have no control over it.

In the six years since I said that, I haven't seen or heard anything that makes me believe any differently. But I'm happy to say that in those same six years the city has made many positive steps to deal with growth in positive ways.

We've been the most active in the area of land use. Since January 2001, we've completed the Washington Square Regional Center plan, created a Downtown Improvement Plan and formed an Urban Renewal District to implement it. And we're grateful to the citizens for passing the tax increment measure that will help fund the public improvements in that plan. We've revised our Planned Development process, and we're halfway through a complete overhaul of the city's Comprehensive Plan, the "blueprint" for the City. That revision will put the plan in line with the results of the Tigard Beyond Tomorrow visioning process, and will guide development in keeping with Tigard Citizen's wants and needs. And through the efforts of Council and Staff, the City of Tigard has a higher profile and more influence in state and regional planning than ever before, meaning that **Your** voices are being heard more loudly when decisions are made at Metro and in Salem.

In the area of Transportation, we've worked with Washington County and Trimet to secure funding for and begin construction of the Westside Commuter Rail System that will tie Tigard and the rest of southeast Washington County into Portland's Light Rail System. We're working with the State of Oregon to find solutions to the congestion on highway 99, and recently Council decided to institute our own local gas tax – money collected here to be spent **here** - to provide funding for the first of those solutions. And we've finally found a way to provide adequate on-going maintenance to our existing system of streets and roads.

During all this time, we've worked hard to hold the line on costs while providing the services that Tigard's residents want, managing so far to do so within the limits of our basic tax rate coupled with fair fees and charges, and without having to come to the voters for additional property tax revenue.

As Tigard matures as a community and moves toward development build-out, you and I have the opportunity and privilege of being the generation to put the "finishing touches" on our city and create the character that Tigard will have for decades to come. For this to work we need citizens to continue to be involved on advisory boards and committees, to volunteer for specific projects and tasks and to let your thoughts be known through your attendance at meetings or sending us your ideas and concerns.

During the next four years it is my goal to guide the City safely down this road that we have chosen together. And as always, it will remain the City's mission to provide the best possible service to its citizens at the lowest possible cost.

God bless you all, and God bless the City of Tigard.



CITY COUNCIL REGULAR MEETING MINUTES

November 14, 2006

Mayor Judie Hammerstad called the Regular City Council meeting to order at 7:05 p.m. on November 14, 2006, in the City Council Chambers, 380 A Avenue.

Present: Mayor Hammerstad, Councilors Turchi, McPeak, Groznik and Graham; Councilors Peterson and Hoffman were excused; Councilors Elect Jordan, Johnson, Hennagin

Staff Present: Doug Schmitz, City Manager; David Powell, City Attorney; Robyn Christie, City Recorder; Joel Komarek, City Engineer

Others: **Intergovernmental Water Board Commissioners:** Patrick Carroll (representing Durham), Dick Winn (representing King City), Bill Scheiderich (member at-large); **Tigard City Councilors:** Mayor Craig Dirksen, Sydney Sherwood, Sally Harding, Nick Wilson, Tom Woodruff (also Tigard's IWB representative), Gretchen Buehner, Councilor Elect; **Tigard Staff Members:** Craig Prosser, City Manager; Dennis Koellermeier, Public Works Director; Tim Ramis, City Attorney; **Consultants:** Mark Knudson, Clark Worth

3. STUDY SESSION

3.1 Joint Meeting with the Tigard City Council and the Intergovernmental Water Board

Mayor Hammerstad provided the introductions. In May 2005 the City of Tigard approached Lake Oswego because it was interested in having a stable source that would satisfy its long-term water interests. The policy considerations would be discussed at this meeting, but no decisions would be made. Each entity hoped to gather information from this meeting and develop an understanding of complementary needs. Tigard desires to secure a long-term water source, and Lake Oswego has an apparent surplus of available water from its water rights in the Clackamas River. Lake Oswego has a high need for infrastructure improvements in the system the cost of which was considerable. If the costs were shared over a larger base, then the improvements would be more affordable. Tigard would not have to seek another water provider and would gain some infrastructure on its own. Lake Oswego needed certainty regarding the access of adequate water supplies and was responding to recent legislation that required Lake Oswego to use its water right or lose it in the future.

Mr. Komarek reported that the Cities of Tigard and Lake Oswego entered into an intergovernmental agreement (IGA) to jointly fund the study effort that began June 2006. The preliminary findings of that effort were presented at this meeting. When he and Mr. Koellermeier discussed the scope of work they identified objectives they felt needed to be addressed. First and foremost it was important to talk about securing long-term supplies for Lake Oswego and possibly Tigard. The intent was to identify a preferred supply scenario, its feasibility and costs, and necessary facility improvements and institutional arrangements that would allow for water to be shared between the two cities.

The Lake Oswego water supply intake was built in the late 1960's and was located about a mile upstream from the confluence of the Clackamas and Willamette Rivers. The water was pumped through a 27-inch transmission main under the Willamette to the treatment plant located in West

Linn. The initial size of the plant was approximately 11 mgd. The water was treated to drinking water standards and pumped through another transmission main to the Waluga Reservoir on the western edge of the service area. The pipeline from the intake to the treatment plant was about 14,000 feet, and the line from the plant to the reservoir was 20,000 feet. In 1980 the treatment plant was expanded to its current capacity of 16 mgd. Water was presently supplied to Lake Oswego residents, a number of special districts located within the urban service boundary (USB), the City of Tigard, and several small subdivisions located in the City of Portland.

Some of the drivers from Lake Oswego's perspective had to do with a number of infrastructure improvements needed due to age and demands within the service area. It seemed like an opportune time to consider a partnership between Lake Oswego and Tigard. Even without such a partnership the in-City demands were quickly approaching the current treatment capacity, so it was important to start the planning effort. The major infrastructure was 40 years old and there were vulnerabilities related to the single pipeline crossing the Willamette. The infrastructure needs will be costly, so a partnership could ameliorate some of the rate impacts by spreading those costs over a larger base. HB 3038 presented most entities holding water permits with some uncertainty as to whether or not they would ultimately be able to develop all the water under those permits.

Lake Oswego and Tigard have both been members of the Regional Water Providers Consortium since 1995. That effort recognized the benefits of a regional system of transmission mains and interconnected water sources for reliability and opportunities to reduce environmental impacts that certain sources were exhibiting. This was an opportunity to explore regional benefits that had been discussed at the Consortium for a number of years.

Mr. Koellermeier described the general boundaries of the Intergovernmental Water Board service area that represented 55,000 people. It was bounded by Hwy 217, the Tualatin River, Scholls Ferry Road, and the urban growth boundary (UGB). For all practical purposes Tigard acquired its water on the spot market which was sometimes a tenuous position. The primary water source at this time was the City of Portland under a ten-year service agreement. That however did not provide all the water needed by Tigard, so water was purchased from several other sources to meet peak usage demands. Tigard was a partner in the Joint Water Commission, but it was structured in such a way that it only allowed the City to access surplus capacity from the other partners. As those partners grew, the capacity was less available. The group was working on a major water supply effort with the Hagg Lake Reservoir Complex which was very expensive and complicated. Tigard would be the farthest customer, and transporting water was very expensive. Shorter transmission generally was a cost-saving factor for any water provider. The City of Tigard had enjoyed a wholesale relationship with Lake Oswego, and before 1994 most of the water in the Tigard District was obtained from the Lake Oswego system. A good share of the infrastructure was designed around that model.

Tigard was involved with aquifer storage and recovery (ASR) which was a technique whereby the City purchased water during the winter when it was plentiful and injected and stored in wells for use in the summer. It was not the end all of Tigard's problems, but it was a good stop gap measure for meeting summer demands. Tigard was one of the founding members with water rights on the Willamette River. It was the first community that went through the process and ended up with a charter amendment that required a vote of the people to approve use of Willamette River water. Wilsonville has been using the Willamette River for three years with excellent results.

It was important for Tigard to make some decisions. The City was growing while at the same time water sources were scarce. The City wanted to be involved at the ownership level so there would be some certainty and to be able to use the financial mechanisms at hand. Ownership would put part of the financial burden into the SDC structure. Currently Tigard's source issues had to be 100% rate funded. When Tigard negotiated 10-year increment contracts with Portland or other large suppliers the rates were structured in such a way as to ease the cost to the retail

customers. Buying water was not a good position to be in because costs were driven up over time. Finally was the issue of timing. Tigard just signed a 10-year agreement with Portland, so it would need to decide whether or not to stay with Portland. Although 10 years may seem like a long time, it takes a long time to develop capital projects.

Mr. Koellermeier reported that Tigard had completed the population and demand forecast, evaluated the condition and established needs over time, identified multiple alternatives, identified the permitting and regulating requirements, developed a draft communication plan, and discussed potential governance options that would allow multiple public agencies to work together. If directed, staff would work on finalizing the costs of the improvement options, complete the financial analysis and rate impacts, refine scenarios, costs, and rates for the final document level, prepare a report, and reconvene this group for further direction. The schedule was ambitious, and Mr. Koellermeier anticipated having a draft report by the beginning of the year and reconvening this group in January or February to discuss the options and receive guidance.

Commissioner Scheiderich asked if Lake Oswego's 38 mgd right were affected by any other superior rights or in stream flow reservations.

Mr. Komarek replied in stream water rights varied depending upon the time of the year. Half of the water permit was certificated but it was in its entirety senior to the in stream water right. There was also a junior permit to the in stream water right. In terms of Western Water Law, the Appropriation Doctrine, and first in time, first in right says if the permit was senior to the in stream water right it took precedence in terms of use. The larger 32 mgd right was senior, and the smaller 6 mgd right was junior.

Commissioner Scheiderich asked how far the water reached by gravity or if was it pumped.

Mr. Komarek replied all of the water was pumped. To reach Tigard from Lake Oswego the water would be pumped two times to get to the Bonita Station and then once again to get into the distribution system.

Commissioner Scheiderich asked the status of the other studies including Hagg Lake and the feasibility study of the pipeline to supply Tualatin Valley Water and Beaverton from Wilsonville.

Mr. Koellermeier responded all these data points would come together in a relatively short period of time. In the first few months of 2007 all three of those efforts would at least be in a draft stage. From Tigard's perspective it would need to make some decisions about staying in all three options or winnow out of some.

Commissioner Carroll asked the vulnerability to the federal government's requiring a certain in stream flow. Would everyone's water rights be reduced?

Mr. Komarek replied the in stream water right was established for the protection of fish and other beneficial uses. He was not aware that the Water Resource Department (WRD) had any plans to seek additional in stream rights. The senior permits would take precedence.

Commissioner Carroll understood endangered species protection would trump all water rights.

Mayor Dirksen asked the size of Lake Oswego's service district.

Mr. Komarek responded the City service area was about 33,000 plus an additional 3,000 to 4,000 customers in areas surrounding the City limits.

Mayor Dirksen understood the 16 mgd treated today was in excess of what was needed based on Tigard's uses which in the summer peaked at about 13 mgd.

Mr. Komarek replied the City was approaching 88% of its treatment capacity. There was one peak day last summer of 14 mgd.

Councilor Graham asked if Tigard had based its projections on full development of Bull Mountain.

Mr. Koellermeier replied Bull Mountain was in the planning area and was a separate chapter of the master plan.

Mr. Knudson was with Carollo Engineering and had been involved with regional water issues for more than 20 years. They had looked at what it would take in terms of infrastructure, costs, and governance as outlined in the scope of work. He discussed the water needs both today and into the future. The key issue was recognition that a decision needed to be made. Lake Oswego was in a position of either going it alone or potentially forming some kind of agreement. In the go it alone scenario Lake Oswego would be faced with making some significant improvements to its existing system. There were some shortcomings with the current system as it was near the end of its design life in some cases, so there were deficiencies to be corrected. Additionally, the system was very close to capacity that could potentially compromise operational reliability. In the case of the joint entity some kind of expansion would be required, so one of the challenges of this project was how one might go about creating a deal that allowed expansion to occur and determining the logical degree to which the joint facilities would be expanded to maximize benefits.

As a first cut, they looked at the service population. It was determined where the entities were in 2005 and where the area would be in 2030 by looking at build out at saturation development. In most cases saturation was being approached in 2045 taking in just the Lake Oswego retail customers. Then Stafford and other wholesalers within Lake Oswego's USB were added excluding Tigard. Right now Lake Oswego was serving 33,000. At build out of both entities the population would be 146,000.

Councilor Turchi asked if the current zoning was used to estimate build out.

Mr. Knudsen replied it was a saturation of all available land based on the current zoning.

Councilor Turchi understood that if he owned a house in the middle of a subdividable lot that it would be considered two housing units for the purpose of build out. This assumed that every piece of property was divided into its smallest buildable unit.

Mr. Knudsen explained there was a range of assumption that went along with that having to do with the amount of land preserved for open space and things of that nature. Build out was really a range of numbers, and these figures were what he believed would be the most likely worst case scenario.

Councilor Turchi noted that Lake Oswego had discussed density at about 1/3 of the actual zone. He suggested there should be some thought about the need to plan for the actual zone density.

Mr. Knudsen responded the attempt was to offer estimates based on the maximum demand in the future to ensure supply.

Councilor-elect Buehner asked what kind of relationship the City had with its customers and could those agreements be terminated.

Mr. Komarek replied the IGAs were for surplus supply. For the most part the entities were on well supplies and purchased water from Lake Oswego during the summer.

Councilor Groznik stated there were some properties in the City, such as Foothills and Avamere, that could have a greater population than current zoning. He was not getting worst case out of this.

Mr. Knudsen understood the concern, but no one could predict the future. The figures reflected the current situation or what was known and there might be places where density was higher in the future. They hoped there would be some give and take between the opportunity for preserving open space that has yet to be designated and that not every acre would be developed to

its maximum capacity. The population projections were translated into water demands. He looked at what Lake Oswego was currently using and its per capita consumption and did the same thing for Tigard. That was averaged over the past several years and applied to the population projections to estimate demand into the future. Numbers were represented down the last 100,000 mgd. These were projections and forecasts but showed what the overall demands would be. The numbers to 2030 were based on Metro's population projection, and after that the build out number was used.

Councilor Turchi asked why Tigard's per capita water consumption was substantially lower than Lake Oswego's.

Mr. Knudsen thought part of it had to do with density and more multi-family residential. There was less Greenspace in Tigard, and part of it was likely a lifestyle choice.

Mr. Komarek agreed Tigard had more density and there were lifestyle choices to consider such as green lawns and open spaces. Water as a commodity seemed cheap.

Mr. Knudsen said it was important to recognize what he said in terms of how the demand numbers were developed. Recent per capita demand consumption was used in projecting the future. Those per person consumption rates would be the same into the future, and that may be an extremely conservative assumption meaning the numbers were likely on the high side in terms of per capita projections.

Councilor McPeak noted the assumption at build out did not include any change in conservation efforts. She thought some additional conservation could be assumed but understood this was the worst case.

Mr. Knudsen replied that was correct. There was a long discussion at the staff level, and the challenge was that there were a lot of uncertainties beyond just per capita consumption because of conservation. The other wild card was something like global climate change and how that would influence the numbers. There was a band of uncertainty with these numbers, but there needed to be a reference point for planning. Another uncertainty had to do with Lake Oswego providing service to the Stafford Basin.

Councilor Graham asked if the projections took into account growth in Happy Valley and Damascus placing additional demands on the Clackamas River.

Mr. Knudsen replied the growth was taken into account in terms of water rights. Lake Oswego currently had up to 38 mgd of water rights, so that was treated as available capacity to serve future demands. He had not allocated any demands on these projections for serving those entities on the east side of the Willamette. They were currently developing these same types of agreements through the North Clackamas Water Commission that allowed Happy Valley, Sunrise Water Authority, Gladstone, and Oak Lodge Water to pool their resources and water rights. He reviewed the four identified scenarios: (1) Lake Oswego does nothing and stays with the current infrastructure capacity of 16 mgd; (2) Lake Oswego's ultimate build out demand was projected at 24 mgd including the current wholesalers, so the logical scenario would be that Lake Oswego planned to meet all of its future demands and build the infrastructure accordingly without Tigard's being in the picture; (3) Lake Oswego had 32 mgd in senior water rights which was highly valuable and could be used to serve both Lake Oswego and Tigard in a joint supply scenario; and (4) was the same except the senior water rights of 32 mgd plus the junior water right of 6 mgd for a total of 38 mgd.

In the do nothing scenario, Lake Oswego would not have to spend a lot of money up front. However, a lot of the infrastructure was older than 40 years and rapidly approaching the end of its design life. Some capital costs would be required to address demand issues. Based on those projections and the growth curves the capacity of the existing infrastructure would be exceeded within the next three years. Given that there were high operational risks Lake Oswego could be in a situation that if pumps went out or if systems failed or the pipe broke the City would not be

able to meet the full capacity for some period of time. That was the worst case scenario, but the City was near redline. Under this scenario, because the water was consumed by Lake Oswego and its current wholesale customers, there was essentially no reliable capacity available for Tigard.

In scenario #2 the system would be expanded to 24 mgd which was the ultimate demand of Lake Oswego and its wholesale customers. Under that scenario Lake Oswego's needs were met with some surplus capacity available for Tigard. As Lake Oswego grew, the Tigard capacity would be reduced, but presumably Tigard could be served with available surplus. Given the additional capacity and built in redundancy the risk of failure would be lower. The bad news was that it was a small piece relative to what Tigard's demands were, so Tigard would need some other base supply upon which to draw. Additionally 14 mgd of the existing water right would be left on the table and was in jeopardy of being lost through the HB 3038 process or some other environmental considerations. Given the fact that Tigard was looking at another primary supply, he assumed Tigard would not be an owner in this scenario. There would be no redundancy other than Lake Oswego's primary supply on the Clackamas River.

Scenario #3 would capture the full 32 mgd senior water right through a joint Lake Oswego/Tigard agreement. Now that Tigard would realize a firm supply beyond Lake Oswego's needs it was assumed Tigard would become an owner or partner in the process. This was important to the financial modeling that would be discussed next. In the shared ownership scenario the capital costs for the improvements and the annual operating costs were shared by both entities and spread over a wider population base. Lake Oswego's demands were met, and there was a minimum of 8 mgd of firm capacity available for Tigard to meet most of its needs. He pointed out the Bonita pump station and the Waluga Reservoir where there was a major interconnect between the two systems that provided some redundancy. In the event that Lake Oswego lost the Clackamas supply or had diminished capacity for some reason conceivably there was an opportunity to feed back from the Tigard system into the Lake Oswego system to provide some backup. That connection existed now at a very limited capacity, and it would have to be resized for capacity. Theoretically there was redundancy by an existing connection, but it was a very low capacity and was not configured to operate that way. Under this scenario it would be a small effort to ensure flow in either direction to meet both communities' needs. There was redundancy and additional capacity that lowered operational risks. There was still 6 mgd of junior water rights left on the table. This scenario did not meet all of Tigard's needs into the future.

Councilor Groznik explained that the water was not being lost; it was going to a different use. He had some problems with the terminology.

Mr. Knudsen continued with scenario #4 of 38 mgd. This was similar to the previous scenario and would provide 14 mgd of firm supply to Tigard and meet Lake Oswego's long term demands of 24 mgd. Tigard would assume an ownership position, and the costs would be shared. The redundancy improved with the additional capacity between the two systems. All existing water rights were committed and met all but a very small portion of Tigard's needs. They did not go beyond that because the water rights did not exist to be able to provide all the water under the planning scenario to meet both Tigard's and Lake Oswego's ultimate needs.

Councilor-elect Buehner asked if there were any thoughts about the long-term viability of the water rights.

Mr. Knudsen replied there was some vulnerability as other development occurred in the Clackamas Basin. A junior water right was conceivably susceptible to curtailment in the future.

Mayor Hammerstad said if every water supplier along the Clackamas River were to use their senior and junior water rights to their maximum, were their enough water rights to satisfy the in stream water rights, or would the Water Master step in and curtail that usage by all of the

suppliers? She was curious about the water rights of all the other providers on the Clackamas and where that put Lake Oswego.

Mr. Knudsen responded the basis of the water rights was first in time. Lake Oswego had a more senior right than others based on the filing date so was protected. The last person with the last water right would be the first one asked to curtail. The significance of junior and senior was based on the filing for the in stream right. The priority would be the senior rights, in stream rights, with the junior rights being the most vulnerable. They had taken a close look at all the users and the rights along the Clackamas River. Basically, it looked like the River was fully allocated which meant that between the existing junior rights, in stream rights, and senior rights there was no additional water left on the Clackamas River. It all depended on what happened in any given year with the weather, so potentially junior rights could be impacted by the Water Master's asking for some curtailment.

Mayor Hammerstad was more concerned about growth in Damascus and Happy Valley. Would they be in a position of using water rights superior to Lake Oswego's and where would that leave Lake Oswego?

Mr. Komarek replied Lake Oswego's senior water right was fourth in line from the most senior rights on the River. South Fork Water Board held the most senior rights, and CRW had one senior to the in stream right but junior to Lake Oswego's. The sum total of South Fork was about 75 cfs.

Councilor Graham asked with all the concerns and development on the east side if conservation efforts would be instituted.

Mr. Komarek replied that in order to have access to undeveloped water one had to demonstrate to WRD that everything to which one had access was being used wisely before further access was granted. That was part of the Water Management and Conservation Plan requirement. Lake Oswego had to demonstrate that the 16 mgd was being managed and conserved to the best of the City's ability before asking for more. The City submitted its extension plan and will provide the management plan early next year.

Councilor Graham hoped that Lake Oswego users would buy into that program. She asked for an explanation of Water Master.

Mr. Knudsen said WRD was responsible for management of the state's waters. One of its roles was to ensure that everyone holding water rights were not taking more than what was allocated under the permit. The Water Master was responsible for ensuring the law was followed.

Mr. Komarek added that there were District Water Masters who were called upon to adjudicate the use of water rights under low flow conditions.

Mayor Dirksen heard concerns about new development on the east side that would possibly curtail of existing water rights. He asked if newer development and the water rights going along with that would be junior to those already in place. Was it possible that water rights could be transferred to someone else?

Mr. Knudsen replied generally not. However, some of those entities had senior water rights. Damascus, Happy Valley, and Sunrise Water Authority did not happen to be any of those entities. The water rights were still limited to a certain mgd. Just because they were senior did not mean they could get more. There was really no more water on the Clackamas River.

Councilor Harding asked the unused water rights of the senior holders. What was the capacity they could tap into?

Mr. Komarek had that data but had not brought it with him. Lake Oswego for example had more than 50% of its total unused. South Fork Water Board probably had at least 50% of its authorized use undeveloped.

Councilor-elect Johnson thought the City was working on the assumption that the senior water rights were secure. How great would the impact need to be to affect Lake Oswego's senior water right.

Mr. Komarek did not believe that was known at this time. If one looked at it in terms of permits rather than population, then only so much could be taken from the River. When one talked about how the Water Master might adjudicate permits on the River, then in a worst case scenario where everyone was using their permits South Fork would be protected first then Lake Oswego and on down the line. Those with junior permits would be subject to restrictions because of in stream rights.

Mr. Prosser heard a lot of interest in getting more information on water rights. There were a number of technical reports available through the public works departments.

Councilor Groznik asked the ranking of Lake Oswego's junior water right.

Mr. Komarek said the priority date was 1973, and there were a few permit holders on the river with permits senior to that.

Mr. Koellermeier commented this was an interesting issue, and some of the other entities on the Clackamas River were actually investing millions of dollars developing their junior rights. They were betting that by having the infrastructure in place they would be better off when the day came that there was not enough water for everyone.

Councilor Groznik asked if the sum of the senior water rights and perhaps duty rights equaled the present flow of the Clackamas River.

Mr. Komarek explained right now total municipal permits on the river totaled between 290 and 300 cfs. About 210 cfs of those permits were senior to the in stream right. Last summer the municipal permit holders used a total of about 110 cfs on a peak day. If one looked at last year as an example, one would not say the Clackamas River was over allocated. There was enough water to support the in stream right plus the municipal diversions. That could vary with the year. On average the River flow was from 750 cfs to 1,000 cfs. The in stream right went from 400 cfs part of the year to 640 cfs between September 15 and July 1. Even if more water rights were allocated they would be potentially worthless except during very high flows.

Mr. Worth said early in the project a cross section of policy makers was interviewed to determine what information was needed and to identify shared values and principles. In general the policy makers were interested, open-minded, and hopeful that some solution might be found. Cost was one of the main issues. Everyone was willing to look at the proposal because it was evident what motivated the other jurisdictions. They also heard questions about the timing of public involvement. The results of the stakeholder interviews were fashioned into values and principles that captured the collective guidance. Mr. Worth reviewed the statements. Secure Lake Oswego's and Tigard's water future ensuring both communities can meet their long-term growth needs. Demonstrate cost savings and favorable rates when compared with other supply options. Retain or obtain ownership interest in long-term drinking water resources. Retain and perfect Lake Oswego's full Clackamas River water rights. Design the Lake Oswego/Tigard partnership to offer parity, fairness, balance. Develop redundant water resources for backup and emergencies. Promote equitable distribution of natural resources throughout the region. Communicate openly with policy makers and the public education them on the communities' current water sources, water system assets including water rights, future infrastructure needs, and various supply options. Nurture cooperation among Lake Oswego, Tigard, and surrounding communities that is beneficial to drinking water and other public services. Expand Lake Oswego's and Tigard's leadership in regional water supply decision making.

Councilor-elect Buehner asked what kind of control West Linn had in terms of expanding the water treatment plant.

Mr. Komarek replied some improvements were made to the plant about five years ago, and Lake Oswego had to go through a condition use process. It was in a neighborhood, but the zoning would allow for an expansion of the plant facility subject to conditional use approval.

Commissioner Scheiderich asked if Lake Oswego had considered other supply options, and the response was that Lake Oswego was concentrating on its rights on the Clackamas River.

Commissioner Carroll asked if Lake Oswego had ever considered relocating its treatment plant.

Mr. Komarek replied Lake Oswego was asked that question during the last process with West Linn, and there were some people interested in having the plant go away. No suitable relocation site had been identified because it was tied to the intake site.

Mr. Knudsen said that was one of the first questions he had asked since it seemed like a viable concept. Staff took a cursory look and confirmed there was not really another good place. Part of the expansion envisioned to accommodate those demands could be done on the current plant site and in the current footprint to minimize the community impact.

Councilor Groznik asked if a conditional use permit were needed if the improvements could be done in the existing footprint.

Mr. Komarek replied there would be new facilities on site. Lake Oswego owned a little over six acres, so it looked at least preliminarily that the plant could be expanded to meet the ultimate treatment capacity of the City's total rights.

Councilor Graham thought the values and principles glaringly did not include conservation.

Councilor Wilson heard two engineers loosely refer to ownership. He understood the water rights could not be sold, but for Tigard the ownership question was a very high priority. Tigard had at least four options for water, so the degree of security in that ownership factored very high.

Mr. Koellermeier responded he had not wanted to get hung up on the term 'ownership' because there were different ways to get there. From Tigard's perspective ownership had to do with long-term security and the ability to use SDCs. That would be addressed during the governance discussion.

Commissioner Carroll suggested that 'equity partner' might be a better term.

Councilor Harding said that while the values and principles were all good, the usage charts showed that Tigard would not get its total use out of the Clackamas River venture. She found the breakdown confusing and the charts unclear, partly because Tigard did not have a lot of buildable land. All of Tigard's needs would not be met by one source.

Mr. Knudsen addressed preliminary results from the technical analysis. Key system components were the Clackamas River intake, the raw water pipeline, the treatment plant, finished water pipeline, Waluga Reservoir, and the Bonita pump station. The pump stations associated with the raw water intake and treatment plant needed to be upgraded. A pump station would also be needed to get the water into the Tigard system. These would not be new pump stations, but they could significantly add to the capacity of the existing pump station. He outlined the intake component needs based on the four scenarios. At the intake in the 16 mgd scenario #1 some upgrading was required to the physical structure and pump capacity increased. Overall the structure could accommodate it, and the screen area was large enough to make this work. In the 24 mgd scenario #2 the pumps would need to be increased, and the pump station would have to be modified. At 32 mgd it became cheaper to build a new intake than to try to rehabilitate and modify the existing intake to handle the capacity. Similarly at 38 mgd a new intake on the Clackamas would be required.

He addressed the 27-inch diameter raw water pipeline that was currently sized to handle 16 mgd. It could carry more water with additional pressure but at the expense of using more energy. In the long-term investment it was better to replace the pipeline. At 24 mgd it would need to be

replaced with 36-inch diameter pipe and 42-inch pipe for 32 mgd and 38 mgd. In all of these cases he assumed the new pipe would take all the capacity of the scenario, and the existing pipe could be used as a back up.

At 16 mgd the treatment plant was at capacity; however, there were some shortcomings with the plant. The discharge pumps needed to be upgraded to increase the pumping capacity and reliability of the pump station. The surge suppression tank needed to be replaced at a large capital cost in any scenario. Scenarios 2 through 4 generally involved expanding the plant within the current plant site. He concluded that conventional treatment made the most sense and was the most cost effective long-term solution. It was possible to get the expanded plant up to 38 mgd on the current six-acre plant site with a fairly compact layout.

The finish water pipe was currently capable of handling the 16 mgd, so no significant improvements would be required. A lot of the pipe was in good shape and had the capacity to handle the 24 mgd. There were segments that would need to be paralleled to provide additional capacity. As the mgd increased there would need to be additional, larger parallel pipes.

Mr. Knudsen addressed the storage facility. Depending upon other storage in the system one might be able to avoid adding more storage at Waluga. In the 32 and 38 mgd scenarios there were high flows going to Tigard, so a lot of water was going through this site to the pump station. A wide spot in the pipe was needed to change the flow rate and run the treatment plant at a fairly constant rate and provide operational flexibility.

Finally, the Bonita Road pump station under the 16 and 24 mgd scenarios would work because there was relatively limited capacity going to Tigard. There might be some minor upgrades at limited capital cost as compared to the 32 and 38 mgd scenarios. In those cases it would be necessary to replace the pump station likely at its current site because of the hydraulics and physical layout.

Mr. Knudsen summarized. Each component was run through the different supply scenarios. At 24 mgd to meet Lake Oswego's ultimate demand there were significant system improvements required. Those were essentially the same system improvements required to be able to expand to serve Tigard. Going back to the demand projection graphs and given the limitations, one saw at 16 mgd Lake Oswego would go over the line in about 2009, and at the end of the line was the basis for the 24 mgd scenario. To serve Tigard with a system capacity of 32 mgd, the line was crossed about 2020. Under the 38 mgd scenario the line would be crossed in about 2035. The construction time table for the 32 and 38 mgd scenarios would be more than three but less than five years including design.

Mayor Hammerstad asked Mr. Knudsen if he had looked at the capacity of other intakes such as South Fork which was less than 10 years old. Did they have excess capacity?

Mr. Knudsen said there was additional capacity available at that intake, but the challenge would be to get it down and across the River. By the time Lake Oswego bought into a share of the capacity, upgraded the facility to increase available capacity, and built the raw water pipeline to connect to the existing system the cost would be about the same as building a new intake.

Mayor Hammerstad challenged that Lake Oswego's intake was within a mile of the mouth of the Clackamas River and downstream from the other intakes and perhaps a wastewater treatment plant. If Lake Oswego did go in with another intake farther up the River, there might be less treatment. She would like to know the relationship of cost under the scenarios of building a new intake versus building the transmission pipes.

Mr. Knudsen would provide information. From an environmental standpoint there was value in being at the lower end because the water stayed in the River a longer period of time. However, water taken out above was not available downstream. From an environmental and permitting standpoint, the state liked it when water was taken out further downstream even though one was more vulnerable. The next step would be to address the costs of the various scenarios and what

that meant in terms of the aggregate alternatives particularly for Tigard as compared to other alternatives. Once those were determined the numbers would be crunched into what that meant in terms of rates. Some assumptions would be made as to how Lake Oswego would be compensated for existing infrastructure and how costs were shared. These assumptions would be a starting point for discussions. He would prepare a draft report to share with staff and the policy makers for direction.

Councilor Wilson said in looking at the graphs from Lake Oswego's eyes going along with 24 mgd the City would be good for 40 years. Almost as much money would be spent as scenario #3, but it could be amortized over 40 years. The green option was obsolete almost the day it opened. He asked if the projections were accurate. He suggested researching the relationship between lot size and per capita consumption. The per capita projection might actually go down.

Councilor-elect Jordan asked how Stafford build out was considered as one of Lake Oswego's wholesalers.

Mr. Knudsen replied it was essentially treated the same as the rest of the service area based on zoning which resulted in a population of 7,000.

Councilor-elect Jordan asked if the City currently owned property next to the Waluga Reservoir.

Mr. Knudsen replied that it did.

A participant asked when water rights might conceivably be lost.

Mr. Komarek responded there was no answer at this time. He did not know of a case in which a municipal water provider relinquished its rights or had been challenged by a third party.

Commissioner Carroll thought the intent of the legislature was to move people in this direction. There were areas like Tigard that did not have adequate water supplies, and they were trying to push the 'haves' together with the 'have nots.'

Councilor Groznik did not see public participation mentioned in the next steps and did not understand how a policy decision could be formulated by February.

Mr. Worth replied public participation was an open question. Everyone mentioned public education because of the project's complexity. One of the leading questions was when that process should begin. One view was that it should wait until there was actually something to tell the public. Another was that the public education piece should start right away because it was so complicated. One question was how the policy makers felt about those views, and another was where the priority should be. He provided a draft public outreach strategy that tried to harness the suggestions gathered during the interview process.

Councilor Groznik thought the process should have already started because there were groups in Lake Oswego who were already concerned. The public was already talking about a number of major infrastructure improvements.

Councilor-elect Buehner was concerned about going public before there was much information.

Councilor-elect Jordan said one of the biggest concerns was that this was an infrastructure problem for Lake Oswego and Tigard that existed no matter how it was solved. The public needed to know the problem existed, and it needed to be kept out in the open.

Councilor McPeak commented that the Lake Oswego Council was just coming up to speed. After the next work shop they might be able to narrow down the options into workable sets of ideas to handle public discussion more productively.

Mayor Dirksen said in the corporate world when one went to the boss with a problem one should have a solution. When the public was showed this problem there needed to be some answers.

Councilor Groznik did not see that as public involvement but rather as public dictation.

Councilor Turchi liked to have time to appreciate the complexity of problems, and he did not feel he had sufficient time to consider this issue. He was surprised about where Lake Oswego was in terms of its own capacity and infrastructure needs and felt he needed a greater understanding. This information needed to be available to the public. The values and principles looked good, but he had not had the time to really think about them or consider their ramifications. He did not want to be pushed to a decision too soon and wanted the public to have a chance to catch up with the Council.

Mr. Worth heard embedded in those comments the need to talk with fellow Councilors and discuss Lake Oswego's and Tigard's problems.

Mayor Hammerstad observed this was an example of starting with the recognition of a problem and working toward a solution. She had been involved in numerous activities in which problems were identified. People will say they did not know about the problem and ask why they were not included, but this was just the beginning. There were possibilities and limitations, and she thought if a public involvement process were started with the existing information that people would make up their own answers which would be the worst case scenario. Until there was more information about options and costs and responsibilities she did not think the entities were ready for public involvement. This was recognition of Lake Oswego's need to protect and perfect its water rights. Was there a way to do that and solve two entities' challenges? She did not believe there was enough information right now to take out to the public.

Councilor Groznik thought the public should be asked if conservation was on the table. That issue had not been addressed. The problem was being attacked with the solution of developing more water rights.

Mayor Hammerstad replied Lake Oswego was working on its Water Management Conservation Plan that would identify conservation measures.

Councilor Groznik had not seen anything about that, and the citizens have not been asked. He felt the City would be making a dramatic mistake if it did not involve the public now with what it had, and let them own the decision.

Councilor McPeak thought Councilor Groznik had some interesting points. However, it seemed as if more issues were being added to an already complex problem. She was concerned if other issues were added, the Council would get nowhere.

Commissioner Winn commented as in many things there was too much information. He looked for a simple summary of key points to address which to him was the protection of water rights. Tigard was interested in being part of Lake Oswego's efforts in a mutual way so that Tigard could have water, have some ownership, and help Lake Oswego get its capacity up. He recommended a succinct presentation to the citizens.

Councilor Woodruff appreciated the opportunity to meet. This issue was probably more on Tigard's radar screen because Lake Oswego did not have to worry a lot about its water source. Lake Oswego had an issue with its infrastructure. This partnership may work if Tigard can get source and Lake Oswego can get help funding infrastructure improvements. In that case constituent needs were met in both cities. It had to be a solution for both sides so the public could see it as a creative possibility that helped everyone. There would be some sticker shock when people found out how the costs, and they will ask elected officials what they had done to ameliorate the costs. There was an opportunity to do something that was very useful, but a lot of work needed to be done by both Councils.

The group commented that this workshop was helpful and recognized that additional work needed to be done in each of the jurisdictions.

Mayor Hammerstad thanked all parties for their perseverance and felt this was the beginning of a relationship between the entities that she hoped would result in good decisions for the constituents. The consultants and engineers presented this complex problem in a way that was understandable and encouraged future discussions. It was an opportunity to set an example for cooperative sharing of a limited resource.

Mayor Dirksen felt this problem was being addressed in a timely manner so action could be taken before 90% capacity was reached. It was clear this was only a first step and that the policy makers would need to have many more discussions. Some questions were answered while others were raised. It was clear to him another round table such as this was needed in the near future, and offered Tigard as the venue.

4. ADJOURNMENT

Mayor Hammerstad adjourned the meeting at 9:10 p.m.

Respectfully submitted,

Robyn Christie /s/
Robyn Christie
City Recorder

APPROVED BY THE CITY COUNCIL:
ON January 22, 2007

Judie Hammerstad /s/
Judie Hammerstad, Mayor

FIFTH TUESDAY MEETING – January 30, 2007

Council: Mayor Craig Dirksen
Councilor Gretchen Buehner
Councilor Sydney Sherwood
Councilor Tom Woodruff

Facilitator: Basil Christopher
Staff: Carol Krager

Citizens:	David Noles	Betty Fletcher
	Bill Hickok	Carl Miller
	Lynn Hurd	Christine Chongway
	Susan Hurd	Frank U. Chongway
	Scott Davenport	Warren Krager
	Paul Fletcher	

Press: My-Thuan Tran, Oregonian

The meeting started at 7:02 p.m. Citizen Facilitator Christopher welcomed everyone to the meeting and described the Fifth Tuesday meeting process and the role of the facilitator.

CODE ENFORCEMENT –

David Noles, 10630 SW Park St., Tigard – said he attended the Fifth Tuesday meeting in May, 2006 expressing concerns about a large structure the neighbor behind his house built. He thanked Council for working with staff to change the Code interpretation which had allowed large structures to be built in yards if they were attached to a house by a breezeway.

Subsequent to Mr. Noles attending the meeting, the Code Compliance Officer noted code violations on his property, including an RV cover in the setback. He has since removed this structure but said he wanted the process to be fair. He said he knew of many such structures in Tigard and wondered why his was the only one that had to be removed.

On August 25, 2006, Mr. Noles received an e-mail from the Community Development Director stating that he was going to instruct the City's Code Compliance Officer to do a survey of the area and see if there were other structures in setbacks. Mr. Noles e-mailed the City in October asking about the survey and was told there wasn't any survey and wasn't supposed to be one.

Subsequent e-mails from the Code Compliance Officer to Mr. Noles referred to 10-12 open cases for structures in setbacks. Mr. Noles requested a copy of that list on December 20 and again on December 27, 2006. He said he placed calls to the Code Compliance Officer, the Current Planning Director and the Community

Development Director but received no response. On January 3, 2007, he e-mailed the City Manager and received the information the next day.

Mr. Noles distributed a copy of the list to the Council. He noted that on the list there were 11 property owners notified by the City that their structures must be removed or brought into compliance, and seven additional property owners whose notifications were pending. Mr. Noles said he drove around to see the listed properties, but in driving past these homes, he saw six other instances (not on the list). He asked, "If you are really going to enforce a setback law you need to enforce the whole lot." He asked each of the Council members to look in their own neighborhoods to see how many people had garden sheds that are not five feet from their back fence or five feet from their side fence. He said, "This is an unenforceable code and the way the Code Enforcement office is running now, it is just irritating the citizens." He said some structures had been up for years, were not an eyesore, and no complaints had been received on them.

Councilor Sherwood asked if there was a safety issue in that the fire department would not have access. Mr. Noles said he didn't think these structures were a life/safety issue. Councilor Buehner said the fire department must have room to carry equipment to the back of a house

Councilor Woodruff said Council heard a proposal from the Community Development Department last week about an encroachment process to ensure compliance based on complaints or safety issues. He said in some cases people had built something that blocked sidewalks or interfered with traffic. He said it was not his understanding that the City was going to go out and cite people on a drive-through when there hadn't been any complaints.

Mayor Dirksen said he was aware of most of the e-mails going back and forth. He said Council's place was not to get involved in individual cases, but to set policy which would be administered by the City Manager and staff. He said that as the City gets older, building becomes denser, and people are building on smaller lots, much closer together. He said this requires a stricter adherence to codes. He said there was a proposed revocable easement process that would allow people to apply for an easement that may allow some of these structures.

Councilor Woodruff said he was unaware of any effort to single out Mr. Noles because he had come forth with these issues. He asked how many in the audience were present because they were cited. (Most raised their hands.)

Betty Fletcher, 10910 SW Fairhaven, Tigard - said she has a pending citation for an RV cover in her driveway. She spoke about the issue of not being able to see the road when backing out of her driveway because the neighbor has two rows of juniper bushes in their front yard.

Councilor Buehner said that overhanging trees and bushes are also a problem in other neighborhoods. She said shrubbery can be addressed in the Tree Code update.

Councilor Sherwood said the Code is on the City's website, and also available at the Permit Center counter. The audience noted that it is written in "legalese" and hard to understand. Councilor Sherwood also said the Comprehensive Plan is being updated.

Warren Krager, 10655 SW Park Street, Tigard - said he is dealing with the boat port issue now, having gotten a building permit and is in the process of moving it. He noted that in just a few minutes, he can drive through neighborhoods and see dozens of these structures. He asked how seriously the City wanted to push this issue?

Councilor Buehner said it depends on what part of the City you live in; in newer areas this would absolutely not be allowed due to CCR's.

Mayor Dirksen said Council should consider the policy as it now stands and whether an adjustment needs to be made. He cautioned though, that Council's suggestions to grandfather older construction may not be allowed, if the City Attorney says there are conflicts due to State law or case law.

Mayor Dirksen said there is precedent for allowing established construction to go through the same process as a new building. One option generally offered to people who built or remodeled something years ago without a building permit (and they are caught) is to require that they get one now. It will be inspected and if it passes there is no reason they can't keep their building. He suggested this could be written into a policy.

Councilor Sherwood suggested discussing this at an upcoming Council Workshop Meeting. She said staff would be there to answer questions and the public can attend but not give testimony. She said, "Citizens can get back to Council with feedback on what they liked and didn't like."

David Noles said he like the proposed revocable easement idea. He also offered a suggestion to get city-wide compliance in a long-term but reasonable way. He said this process could be put into place as a property comes on the market to be sold. A permit and inspection of the home would be required. If any outbuildings, remodels, sheds, RV covers, etc., are determined to be in setbacks or are found to be substandard, they would have to be repaired/eliminated at that time. He said if he was moving and was told he had to move his lawnmower shed, it would not be much of a problem since he was moving anyway. He said the inspections at time of sale would generate money to pay for themselves and he knows that staff is having to take time in their already busy schedules now to check out all these structures.

Councilor Sherwood said, "That is what concerns me. We've got all these things that we need to be getting done and we've got people out now because we said if you're going to fix one you have to fix them all."

Councilor Sherwood said Mr. Noles' idea might be a good compromise. Councilor Buehner said each property would have to be reviewed and documented properly.

A question was raised about the Cityscape article that said setbacks range 15-30 feet for the front yard.

Councilor Buehner said there is a strict code for setbacks for garages. She said the 20' garage setback is so a vehicle parked in front of a garage, it cannot extend out over the sidewalk (or where the sidewalk would be if you had one).

Scott Davenport, 13410 SW Ash Avenue, Tigard – received a notice that said he had to remove his structure by January 31, 2007. He said he has moved it back 21' from the street. But according to the aerial photos he was sent, his front porch is also in violation of the front setback. He asked, "Do I have to tear my house down? Am I going to get a citation on this?"

Councilor Sherwood said Council would call the City tomorrow and ask for a hold to be put on this until we can discuss it at a workshop session.

Councilor Buehner said a lot of houses in older parts of the City are within the front setbacks because road width requirements were different when they were built. She cited Gaarde and Walnut Streets as examples. She said that sometimes houses end up in the right-of-way because their street is widened.

Mayor Dirksen mentioned the church on Bonita Road, which has an entrance roof peak that hangs over the sidewalk. He said that strictly speaking, the porch is not in compliance with the Code, but because the church was there before the right-of-way was widened, it was allowed. He said it is possible that the same case might apply to Mr. Davenport's house.

Councilor Woodruff asked the audience if anyone felt they were on the list not because there was a complaint or safety issue, but because of a Planning staff drive-by. Most hands were raised. Bill Hickok said his neighbors on either side of him were present and they had not complained about each other. Some people said they heard from Mr. Noles that they were on a list to receive a citation but hadn't yet. Councilors Woodruff and Sherwood said they didn't realize this was what the City was doing.

Councilor Sherwood said the Council would check into the reason why Mr. Noles did not receive an answer right away. Mr. Noles said up until that point the City had been responsive. Councilor Woodruff said citizens can always send correspondence directly to Council.

It was asked how follow-up information will be given. Councilor Sherwood said people will be notified in writing so they have a copy. Mr. Noles' asked, "So basically, everything is in a holding pattern for now?" Council and Mayor Dirksen responded that the City Manager would be contacted the next day so staff knows to put this on hold until Council can discuss potential solutions with staff.

Councilor Sherwood said she liked Mr. Noles' suggestion but cautioned that it must go through a lot of review, including a legal review. She said she doesn't want

someone, when faced with removing a structure before they sell their home, to have to come up with thousands of dollars. Councilor Sherwood said the City would continue to proactively educate people through the Cityscape. She also suggested that people be told, "Just because you see something at your neighbor's, don't assume that you can do the same thing." Councilor Buehner said, "My Neighbor did it – is not a valid defense." Councilor Sherwood said, "We need to do a lot of education before we make people get their permits, so people understand." She suggested holding a few Town Halls with staff and Council present to answer questions.

Councilor Sherwood said, "In your neighborhood, it's an older neighborhood and you've all done it, and so there are no complaints. But I can guarantee you that if you went into another neighborhood that is all built up and someone sticks a great big cover and puts their big RV out there you'd have people in here screaming and yelling..."

Mr. Noles said that is why he felt it should be left as a complaint-driven process.

Councilor Woodruff asked if everyone who wanted to had spoken. There were no further comments on the code enforcement issue.

GAX TAX/TRAFFIC –

Councilor Buehner said she had expected people to come to speak about the gas tax.

Councilor Sherwood gave some background on the gas tax saying that the biggest complaint they hear is about traffic getting through Tigard. She said 99W is a state highway and the amount of money they have for it keeps dropping. She said Tigard asked ODOT if they would work with them if Tigard put up money towards solving some of the traffic issues. She said the county is fixing the Hall Blvd. intersection which, unless the Greenburg intersection is also worked on, doesn't give the full impact.

Councilor Sherwood said a citizen task force figured that a 3-cent per gallon tax over three-five years would help generate between 3.5 -5 million dollars to fix the intersection on Greenburg Road.

Councilor Buehner said this is a way for people who actually use the road to be charged as 50% of the traffic on Highway 99 is non-Tigard residents. She said it would be more fair to have people that use the road help contribute to solving the problem.

A citizen asked if people wouldn't figure out that they can drive ten miles further down the road to avoid paying the extra tax? Business owners in Tigard would be hurt.

Councilor Buehner, who chaired the citizen task force prior to being elected to the Council, said they listened to the gas station owners who met with them and argued

that the state should increase their gas tax. She said that the ordinance specifically states that if the Washington County or Oregon gas taxes increase, Tigard will reduce their tax so it is revenue-neutral. She said since nearby cities are all facing the same issues it is very likely that they will all look at doing this.

Mayor Dirksen noted that Multnomah County already has a 3-cent gas tax.. Councilor Sherwood said she has figured out that this gas tax will add 54 cents each time she fills her tank, and she can't even buy a cup of coffee for 54 cents. She said if that extra money put towards improving Highway 99W will help her in the long run to get home or to her mother's faster, she felt it would be worth it.

Councilor Buehner said that if you drove an average of 12,000 miles per year it would cost only \$15.

A citizen asked if Tigard had to set up some infrastructure to collect this.

Councilor Buehner said the state already has the infrastructure to collect gas taxes and this is the cheapest collection model, so money is not wasted on administrative functions. She also noted that by doing both projects at the same time we only tear the street up one time, and money can be saved on construction costs.

Scott Davenport asked about how to address developers buying a lot, getting rid of the one house on the lot and then putting up a thousand apartments, which increases traffic unbelievably.

Councilor Sherwood suggested one way to get involved as a citizen is to come to discussions on the Comprehensive Plan Update.

Councilor Buehner said the Transportation Task Force is considering adding a city TIF, or Transportation Impact Fee. She said there is a County TIF but it is not enough. This would allow the City to start building a fund to start addressing collector street issues.

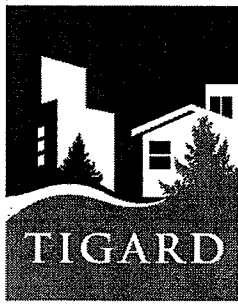
Frank Chongway, 11242 SW 81st, Tigard - said he lives near the church (at the old GM Center) which is adding a 1,000 seat auditorium. He said the auditorium traffic is not going to be allowed access onto Hwy99 which will put thousands more cars onto their street which is already backed up because of Costco traffic. He said, "We can't even turn onto Pfaffle Street because nobody lets us out." He said one of the engineers for the new office building construction was trying to work with ODOT to reverse the lights but they weren't receptive. Councilor Buehner asked Mr. Chongway to write something up and send it to her and she would look into it further.

ACTION ITEMS:

- Mayor Dirksen will look into the difficulty Mr. Noles experienced getting public information.
- Review code compliance with staff related to RV and driveway coverings (set back requirements). Consider allowing variances unless there is a safety issue, such as a tree blocking an intersection.
- Mayor Dirksen will notify the City Manager to put a hold on any actions regarding setback violations until the Council has had a chance for more discussion in an upcoming Workshop Meeting. Citizens will be notified by mail of their status.
- Councilor Sherwood suggested discussing this at a Workshop Meeting which would include planning staff. She said the audience could attend - not to make comments - but to listen and then let Council know what they agree or disagree with. A priority will have to be assigned to staff (Which projects can be dropped so they can work on this one?) They are already busy working on the downtown plan and comprehensive plan update.
- Councilor Buehner will look into Mr. Chongway's traffic complaint when she receives his letter.

Councilor Woodruff thanked everyone for coming. The meeting was adjourned at 8:35 p.m.

I/Admin/Carol/FifthTuesday/ 070130



MEMORANDUM

TO: Honorable Mayor & City Council
Cathy
FROM: Cathy Wheatley, City Recorder
RE: Three-Month Council Meeting Calendar
DATE: February 5, 2007

Agenda Item No. 3.2.c
For Agenda of February 13, 2007

Regularly scheduled Council meetings are marked with an asterisk (*).

February

13*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
19	Monday	President's Day Holiday – City Hall Closed
20*	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall
27*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall

March

13*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
20*	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall
27*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall

April

10*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
17*	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall (Tentatively: Joint Meeting with Intergovernmental Water Board and Lake Oswego City Council)
24*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
30	Monday	Budget Committee Meeting – 6:30 pm, Library Community Room

Tigard City Council Tentative Agenda 2007

Agenda Item No. 3.2.d
Meeting of Feb. 13, 2007

Meeting Date: February 13, 2007 Meeting Type/Time: Business/6:30 p.m. Location: City Hall Greeter: Gus Materials Due @ 5: January 30, 2007	Meeting Date: February 20, 2007 Meeting Type/Time: Workshop/6:30 p.m. Location: City Hall Greeter: Materials Due @ 5: February 6, 2007	Meeting Date: February 27, 2007 Meeting Type/Time: Business/6:30 p.m. Location: City Hall Greeter: Materials Due @ 5: February 13, 2007
Study Session	Workshop Agenda	Study Session
TMC Amendment Discussion re: Solid Waste Management - Dennis - 20 min. Exec. Sess. - Real Prop. Update - Dennis - 15 min. Burnham Street Update - Gus - 15 min.	Budget Committee - SI - Bob S. - 45 min. Joint Meeting with Planning Commission - & Comp Plan Update - Tom C. - 60 min. - SI Joint Meeting with Citizens for Community Involvement - Duane R. - 30 min. - SI Tree Board Revisions to Development Code - Ron B. - 30 min. Code Enforcement & Compliance Discussion - Tom C., Dick B., Christine D. - 35 min.	CCAC - Annual Report - Phil N. - 30 min. Jaywalking Ordinance Discussion - Bill D. - 10 min. Graffiti Ordinance Discussion - Bill D. - 10 min. IGA w/Clean Water Services for Fanno Creek Master Plan - Phil N. - 10 min.
Consent Agenda		Consent Agenda
IGA w/Clean Water Services for Sanitary Sewer Master Plan preparation - Tom C. Approve Budget Amend. # 12 for Sewer Master Plan Project Additional Funding -Michelle- RES Disband Planned Dev. Code Review Comm. CD - RES IGA w/Wash. Co. re West Nile Virus - Dennis Authorize City Mgr. to sign Settlement Agreement w/BSA - Loreen M.-RES		Establish Fanno Creek Park/Public Use Area Steering Committee - Phil N. - RES CCAC- Re-establish member terms - Phil N. - RES Appoint PRAB members - Dennis K. - RES LCRB- Award Contract for Fuel Delivery & Card Lock Services - Dennis K. IGA w/Clean Water Services for Fanno Creek Master Plan - Phil N.
Business Meeting		Business Meeting
THS Student Envoy - 10 min. Annexation Policy Discussion - Tom C. - 60 min.		Chamber of Commerce Rep. - 10 min. Sunrise Lane LUBA Remand to revise ordinance re continued application of Goal 5 in Bull Mt. Community Plan - PHQJ -ORD -Tom C. 30 min. Consider Tualatin River Bike/Ped Bridge Naming - Dennis - 10 min. -RES Review City Encroachment Permit Policy - Nancy W. - 30 min. CCDA - Downtown Urban Design - Tom C.-35 min. Sen. Ginny Burdick and Rep. Larry Galizio - Legislative Update - Liz N. - 30 min.
Time Avail: 135 min. - Time Scheduled: 70 min. Time Left: 65 min.	Time Avail: 200 min. - Time Scheduled: 200 min. Time Left: 0 min.	Time Avail: 135 min. - Time Scheduled 145 min. Time Left: - 10 min.

Tigard City Council Tentative Agenda 2007

Meeting Date: Meeting Type/Time: Location: Greeter: Materials Due @ 5:	March 13, 2007 Business/6:30 p.m. City Hall February 27, 2007	Meeting Date: Meeting Type/Time: Location: Greeter: Materials Due @ 5:	March 20, 2007 Workshop/6:30 p.m. City Hall March 6, 2007	Meeting Date: Meeting Type/Time: Location: Greeter: Materials Due @ 5:	March 27, 2007 Business/6:30 p.m. City Hall March 13, 2007
Study Session		Workshop Agenda		Study Session	
Exec. Session: Pending Litigation re Measure 37 - Tim R. - 20 min. Exec. Session: Labor Relations - Sandy -20 min. Discussion of Cross Connection Code Updates Dennis K. - 20 min.		Joint Meeting with the Intergovernmental Water Board - Dennis - 30 min. Joint Meeting with Library Board - Margaret B. - 30 min. - SI GIS Pilot Project - Bob S. - 15 min.		Review Proposed Paid Time off Policy for Mgmt. Group Employees - Sandy - 30 min.	
Consent Agenda				Consent Agenda	
				LCRB - Award Aquifer Storage and Recovery Test Well Drilling Contract - B. Rager LCRB - Award Water Building Renovation Contract - B. Rager Receive and File Annual Solid Waste Financial Report - Public Works	
Business Meeting				Business Meeting	
THS Student Envoy - 10 min. Residential Zoning Dist. Regulations Amendment Legis. Public Hearing - Tom C. - 30 min. Amend TMC regarding Solid Waste Mgmt. Enforcement Officers - Dennis K. 10 min.-ORD LCRB - Fanno Creek Master Plan Contract - Phil. N. - 30 min.				Chamber of Commerce Rep. - 10 min. Measure 37 Hearings (3) Need RTS	
Time Avail: 135 min. - Time Scheduled: 80 min. Time Left: 55 min.		Time Avail: 200 min. - Time Scheduled: 75 min. Time Left: 125 min.		Time Avail: 135 min. - Time Scheduled: 10 min. Time Left: 125 min.	

Tigard City Council Tentative Agenda 2007

Meeting Date: Meeting Type/Time: Location: Greeter: Materials Due @ 5:	April 10, 2007 Business/6:30 p.m. City Hall March 27, 2007	Meeting Date: Meeting Type/Time: Location: Greeter: Materials Due @ 5:	April 17, 2007 Workshop/6:30 City Hall April 3, 2007	Meeting Date: Meeting Type/Time: Location: Greeter: Materials Due @ 5:	April 24, 2007 Business/6:00 p.m. City Hall April 10, 2007
Study Session		Workshop Agenda		Study Session	
		Joint Meeting with Intergovernmental Water Board and Lake Oswego City Council to discuss Possible Water Partnership - Dennis- 120 min. - INCLUDES DINNER (DATE IS TENTATIVE - PLEASE HOLD) Enhanced Citizen Participation Update - Admin. 20 mins. - SI (Can this be moved?)		Executive Session: Labor Negotiations Sandy - 25 min. Review of Proposed Revisions to City Wide Personnel Policies - Sandy - 20 min.	
Consent Agenda				Consent Agenda	
Business Meeting				Business Meeting	
THS Student Envoy - 10 min. TMC Amendment regarding Cross Connection Control Program Dennis K. - 10 min. - ORD Measure 37 Hearings (3) Need RTS				Chamber of Commerce Rep. - 10 min. 1st Qtr.Goal Update - Craig P. - 15 min.- SI Volunteer Program Update - Bob R. - 20 min. - SI Measure 37 Hearings (3) Need RTS	
Time Avail: 135 min. - Time Scheduled: 20 min. Time Left: 115 min.		Time Avail: 200 min. - Time Scheduled: 140 min. Time Left: 60 mins.		Time Avail. 135 Time Scheduled 45 min. Time Left 90 min.	

Agenda Item #
Meeting Date

3.3
February 13, 2007

COUNCIL AGENDA ITEM SUMMARY
City Of Tigard, Oregon

Issue/Agenda Title: Approval of an Intergovernmental Agreement with Clean Water Services for the Preparation of a Sanitary Sewer Master Plan

Prepared By: G Berry Dept Head Approval: TC City Mgr Approval: Q

ISSUE BEFORE THE COUNCIL

Shall City Council approve and authorize the City Manager to sign an Intergovernmental Agreement with Clean Water Services for the preparation of a City sanitary sewer master plan?

STAFF RECOMMENDATION

Approve the proposed Intergovernmental Agreement with Clean Water Services.

KEY FACTS AND INFORMATION SUMMARY

- The purpose of the proposed attached agreement is to prepare a sewer master plan for the City. The agreement was reviewed by City Council at its January 13, 2007 Study Session.
- The proposed City master plan will recommend rehabilitation, expansion and replacement projects over the next 20 years that will guide the preparation of the 5-year Community Investment Program and identify projects for the subsequent 15 years. It will be a separate plan prepared by a consultant hired by CWS to update the *2000 Sewer Master Plan Update*, which is the current basin-wide plan.
- The *2000 Sewer Master Plan Update* identified nine City sewers with suspected sewer capacity deficiencies. In addition, City staff has identified three other areas that may also have inadequate capacity. CWS will install flow monitoring stations at all of these locations and record sewer flows to determine the extent of the capacity deficiencies.
- The consultant will use the results of the flow monitoring to develop a plan to correct the deficiencies.

OTHER ALTERNATIVES CONSIDERED

Flow monitoring by a private contractor was considered but was found to be more costly.

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Implementation of the master plan would contribute to meeting the Tigard Beyond Tomorrow Growth and Growth Management goal of "Growth will be managed to protect the character and livability of established areas."

ATTACHMENT LIST

Attachment 1: Proposed Master Plan Intergovernmental Agreement with CWS

FISCAL NOTES

The estimated cost of the master plan is \$151,000. This includes \$35,000 for Clean Water Services to conduct the flow monitoring and \$116,000 for the consultant to prepare the plan. Funding is through the sewer fund and has been included in the FY 06-07 and FY 07-08 Community Investment Program.

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**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLEAN WATER SERVICES AND THE CITY OF TIGARD
FOR PREPARATION OF A SANITARY SEWER MASTER PLAN PROJECT NO. 6174**

This Agreement dated _____, 2006, is between Clean Water Services (District) a county service district organized under ORS Chapter 451 and the City of Tigard, Oregon (City) an Oregon municipality.

A. RECITALS

WHEREAS, ORS 190.003 - 190.110 encourages intergovernmental cooperation and authorizes local governments to delegate to each other authority to perform their respective functions as necessary.

WHEREAS, City and District intend to jointly undertake the Sanitary Sewer Master Plan Update No. 6174 (Project), to update the District Sanitary Sewer Master Plan and create new sanitary sewer master plans for the cities of Tigard and Hillsboro.

WHEREAS, City and District have agreed that the Project includes, selection of a consultant, preparation of a scope of services, negotiation of a contract, administration, and management of the consultant contracts; installation, maintenance, data collection and management of flow monitors, review of all consultant prepared documents, and preparation of a final Master Plan Document.

NOW, THEREFORE, the parties do mutually agree as follows:

B. CITY OBLIGATIONS

City shall:

1. Designate an individual to serve as City Master Plan Project Manager.
2. Review and assist in development of the Scope of Services for the Request for Proposals.
3. Assist in the consultant selection process.
4. Assist in the development of the Scope of Services for the consultant contract.
5. Participate in project meetings with District and consultant.
6. Review and provide timely comments on consultant submittals.
7. Assist District with access to manholes for flow monitoring as needed.

Intergovernmental Agreement
City of Tigard and Clean Water Services
Sanitary Sewer Master Plan Project No. 6174
Page 1 of 5

8. Review consultant invoices for "Tigard Master Plan" work as provided by District and provide feedback or approval to District within 2 weeks.
9. Reimburse District the cost of consultant services associated with the Tigard Master Plan Scope of Work attached as Exhibit A. Tigard Master Plan work shall not exceed \$116,000 without written consent of City.
10. Reimburse District \$35,000 for conducting flow monitoring at 9-12 sites for a period of time necessary to collect wet weather flow data and dry weather flow data. This time is estimated to be 7 months. Should the duration differ by more than 2 months from the estimate, City and District may negotiate a modified cost based upon actual labor costs to conduct monitoring, and depreciation of monitoring equipment. District will notify City at least 2 weeks prior to the end of the ninth month if additional monitoring will be necessary. City shall provide written authorization to continue monitoring beyond nine months.

C. DISTRICT OBLIGATIONS

District shall:

1. Work with City to prepare a Scope of Services for Tigard Master Plan.
2. Prepare Request for Proposals, advertise, coordinate and administer consultant selection process.
3. Negotiate contract with selected consultant.
4. Prepare technical scope of work and exhibits for consultant contract.
5. Contract with an engineering consultant for District and City master plan services.
6. Coordinate project meetings with consultant and City.
7. Coordinate review of consultant submittals.
8. Review and process all consultant invoices. District Project Manager shall confirm status of work with City Master Plan Project Manager prior to processing invoices.
9. Ensure consultant performance of work detailed in consultant contract and described in Tigard Master Plan Scope of Work attached as Exhibit A.
10. Invoice City on a regular basis as invoices are received from the consultant.
11. Make payments to the consultant.

12. Conduct flow monitoring at 9-12 sites within the Tigard local collection system for verification of modeling and/or calibration of the model as deemed necessary from modeling and monitoring results. District shall be responsible for installation, maintenance, and data collection.
13. Invoice City \$5000/month for 7 months for flow monitoring activities.
14. Record actual costs of conducting the flow monitoring should it become necessary to adjust the cost based upon the flow monitoring lasting fewer than 5 months or more than 9 months.
15. Provide City with 2 copies of the final 2006 District Master Plan Update and ten copies of the City of Tigard 2006 Sanitary Sewer Master Plan.
16. Obtain written approval from City prior to making any contract amendments with the consultant that would affect the scope of services or the cost for City.

D. GENERAL TERMS

1. Amendment of Agreement

City and District may amend this Agreement from time to time, by mutual written agreement.

2. Indemnification Clause

Subject to any provision of the Oregon Constitution and ORS 30.260-30.300 and within the limits set forth in ORS 30.270, each party hereby agrees to protect, defend, hold harmless, and indemnify the other, its officers, employees and agents of and from any claims, damages, compensation, suits, actions and expenses, including reasonable attorney's fees, occasioned in whole or in part by the negligent acts, errors or omissions of the indemnitor or its employees, while in any way engaged in the performance of this Agreement.

3. Resolution of Disputes

If any dispute arising out of this Agreement can not be resolved by the project managers from each party, the City Manager and District General Manager will attempt to resolve the issue. If the City Manager and District General Manager are not able to resolve the dispute, the parties will submit the matter to mediation, each party paying its own costs and sharing equally in common costs. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as

otherwise provided by Oregon law.

4. Laws and Regulations City and District agree to abide by all applicable laws and regulations.
5. Integration This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this agreement and no waiver by a party of any right under this Agreement shall prejudice the waiving party's exercise of the right in the future.
6. Attorney Fees If any dispute arises concerning the interpretation or enforcement of this Agreement, the prevailing party in any such dispute shall be entitled to recover all of its attorney fees, paralegal fees, costs, disbursements and other expenses from the nonprevailing party, including without limitation those arising before and at any trial, arbitration, bankruptcy, or other proceeding and in any appeal.
7. Term of Agreement This Agreement is effective from the date of execution by both parties until the completion of all obligations created by this Agreement.
8. Termination This Agreement may be terminated only by mutual written agreement of both parties.
9. Interpretation of Agreement
 - A. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.
 - B. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
10. Severability/Survival If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.
11. Approval Required This Agreement and all amendments shall become effective when approved by 1) District's General Manager or the General Manager's designee and, when required by applicable District rules, District's Board of Directors and 2) the City Council and the City Manager.

12. Choice of Law / Venue This Agreement and all rights, obligations and disputes arising out of the Agreement shall be governed by Oregon law. All disputes and litigation arising out of this Agreement shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first written above.

CITY OF TIGARD, OREGON

By: _____
Craig Prosser, City Manager
City of Tigard

CLEAN WATER SERVICES

By: _____
Bill Gaffi, General Manager

APPROVED AS TO FORM

District Counsel

City of Tigard

1. Identify Rehabilitation Needs and Maintenance Issues

Objective: The objective of this task is to identify those portions of the Tigard sewer system that are experiencing capacity, surcharging, significant I/I, and/or maintenance, problems and are in need of rehabilitation.

Task Description

Consultant shall interview City engineering and operations staff and utilize large scale maps, aerial photographs and maintenance records to identify problem areas in the collection system. The following topics shall be addressed in the interviews:

- System condition and performance in sewer lines
- Known hydraulic bottlenecks, overflows, blockages, and other recurring O&M issues

2. Evaluate Identified Problems

Objective: The objective of this task is evaluate the underlying issues creating the observed system problems not associated with capacity that were identified in Task 1.

Task Description

Consultant shall conduct one or more of the following activities to evaluate the non-capacity items of concern identified in Task 1:

- Review of record drawings
- Review of system age information
- Review of available closed circuit television inspection records.

Consultant may also recommend additional CCTV inspections that appear to be warranted

Following investigation of deficiencies, consultant shall rank problems by level of severity and risk based upon anecdotal information and formal documentation.

Deliverables

Technical Memo T-1 - summarizing the findings of the evaluation and recommended course of action. A system map will be prepared coding priority of the work and method of rehabilitation. The recommendations will include modifications to the structural data in the District Hydra model where needed.

3. Conduct Flow Monitoring

Objective: The objective of this task is to conduct flow monitoring in areas that have been identified as potential over-capacity portions of the system. The flow monitoring data shall be sufficient to calibrate the Hydra model for the sub-basins identified.

Task Description

A. Flow Monitoring Plan

Consultant will work with District and City staff to develop a Flow Monitoring Plan. The Plan will include:

- Recommended flow metering locations, selected to measure I/I in areas affecting the nine sewer reaches with apparent capacity limitations identified in previous modeling, plus three additional reaches. The sites selection criteria will also include maximizing coverage of the collection system and differentiating between various sub-regions.
- Identification of the personnel, roles, schedule, and general procedures for the monitoring program. This portion of the plan will be developed in large part by District staff, in consultation with Consultant and City staff for coordination of resources.

Consultant will attend a metering program kick-off meeting with City and District staff to review and finalize the Flow Monitoring Plan and schedule, and identify key team contacts and lines of communication between the metering team and the City.

B. Site Assessments

Consultant will participate during the initial site field assessments to be conducted by District staff, and review recommendations of the metering installation team regarding suitability of the selected sites.

C. Metering Program Coordination

Consultant will coordinate flow monitoring activities and facilitate good communication throughout the flow monitoring period. This will include participation in key portions of the field work. We will periodically review the flow data to monitor the success of the metering program and to assess the nature of peak flow events captured by the meters. Consultant will meet twice with City and District staff during the metering period to discuss preliminary results and to determine when sufficient data has been collected such that the metering program can be terminated. District will provide flow metering data in spreadsheet format that has been subjected to quality control review and can be relied upon as an acceptable representation of flows at the metered locations for the purposes of model calibration.

4. Refine the District Hydra Model

Objective: The objective of this task is to determine where capacity restrictions exist based upon modeling and observation of high flows. Where metering results

verify a potential for surcharging, the District Hydra model shall be calibrated using data from flow monitoring in the Tigard Area.

Task Description

Consultant shall perform the following tasks to determine where calibration is necessary and to calibrate the model:

- Process the flow meter and rainfall data into wet and dry season templates
- Determine wet weather:dry weather flow ratios under various rainfall events
- Compare wet-weather flows with modeled wet-weather flow projections under similar storm condition
- Where wet-weather flows exceed the flows projected by the uncalibrated model AND the model projects pipe surcharging, calibration of the model to the metered flows for the given sub-basin shall be conducted.
- Where wet-weather flows do not exceed the flows projected by the uncalibrated model or the model does not project pipe surcharging, I/I input parameters shall be adjusted to more closely match the observed flow rates, but calibration of the model to the metered flows for the given sub-basin shall not be conducted.
- When calibration is determined to be necessary, the following procedure shall be followed:
- Revise the dry and wet weather spreadsheet tools to associate sewersheds with the flow meter.
- Revise the dry-season Defects database for the Hydra model.
- Set up graphing tools for dry-season calibration
- Calibrate to dry-season flows metered during the upcoming dry weather season.
- Select wet-weather events for calibrating the Tigard system (moderate antecedent condition).
- Set up graphing tools for wet-weather event calibration.
- Prepare first-cut estimates for I/I ratios using a graphical method for each flow meter.
- Revise the monitor defects summary spreadsheet by adding the flow meters and estimated parameters.
- Revise wet-weather Defects database.
- Calibrate the Tigard area captured by flow meters to selected storm events.
- Determine unit I/I rates for existing land use conditions and the 5-year 24-hour design storm by sewershed.

Deliverables

Technical Memo T-2 presenting flow metering results and determination of which sub-basins are recommended for calibration,, I/I calibration and recommended modeling parameters. Updated model input files and results tables.

5. Develop Capital Improvement Plan

Objective: The objective of this task is to assess the priority of identified projects and categorize them near-term or development driven.

Task Description

Consultant shall develop recommended improvements and/or maintenance activities to address each of the problem areas identified under Tasks 2 and 4. The analysis will include consideration of replacement vs. rehabilitation with respect to costs, I/I reduction, and system age or other factors. The cost estimating methodologies developed for the District Master Plan Update will be used to estimate costs of proposed improvements. The improvements, along with those identified in the Hydra model run, shall be listed in a capital improvement plan and categorized as near-term or development driven.

Each CIP project shall be presented with a project map and project description, justification and estimated project cost.

Consultant shall develop recommendations for an ongoing assessment and I/I reduction program including flow metering, video inspection, and smoke testing. Consultant shall present the draft CIP and program recommendations to City staff for review prior to producing the technical memorandum.

Deliverables

Technical Memo T3 –Five-Year Capital Improvement documenting individual projects with descriptions, justification, and maps. Digital Mapping files shall be provided.

6. Prepare Tigard Master Plan

Objective: The objective of this task is to compile the findings of Tigard Tasks 1-4 documented in Technical Memoranda T-1, T-2 and T-3 as well as data compiled from the District Master Plan into a comprehensive document that will serve as a tool and guiding document for the City of Tigard sanitary sewer operations .

Task Description

Consultant shall compile selected District and City technical memoranda, supplemented with background text in a master plan document. The document shall reflect review comments on the technical memoranda, and will incorporate, as appendices, detailed data used to develop the conclusions and recommendations. Recommended improvement projects will be presented on a collection system map.

Deliverables

City of Tigard 2006 Sanitary Sewer Master Plan – Consultant shall compile findings and recommendations for future sanitary sewer conveyance system improvements. Report shall be divided into logical sections documenting

background, process used in developing the plan, assumptions, modeling results, and recommendations. Appendices shall include data and technical memo used to develop the conclusions and recommendations in the report.

Consultant shall produce 5 paper draft copies of the Master Plan for review by the City and District. Following City and District review, Consultant shall produce 10 final paper copies and an electronic version in pdf format.

Project Management and Quality Control

Consultant shall conduct the activities necessary to produce a quality product while maintaining good coordination and communication with the District and City. The project management and quality control activities include:

- 1) Preparing and maintaining a Project Management Plan addressing project team organization, roles and responsibilities, schedule, budget, and QA/QC procedures.
- 2) Meetings with District Project Manager on a schedule to be determined to discuss progress and overall direction of the project at key milestones and decision points.
- 3) Monitoring project progress by tracking work completed, work remaining, budget expended, schedule, estimated cost of work remaining, and estimated cost at completion.
- 4) Monitoring staff availability and making adjustments as necessary to assure availability for the Master Plan Update project.
- 5) Preparing and submitting a monthly narrative report, invoice, and progress schedule.
- 6) Preparing and implementing teaming and partnering plans.
- 7) Identifying responsibilities for review of key work products.
- 8) Performing quality controls reviews on all project deliverables prior to submittal to the District and City. Reviewing documents to confirm approach taken and material developed conforms to the needs of the project. Checking overall quality of the document, technical accuracy and adherence to established standards.

Project Management and Quality Control deliverables include:

- 1) Project management Plan
- 2) Meeting minutes
- 3) Periodic schedule updates
- 4) Monthly Status report with invoices
- 5) QA/QC Plan including teaming and partnering plans.

Agenda Item #
Meeting Date

3.4
February 13, 2007

COUNCIL AGENDA ITEM SUMMARY
City Of Tigard, Oregon

Issue/Agenda Title A Resolution Approving Budget Amendment #12 to the FY 2006-07 Budget to Increase Appropriations in the Sanitary Sewer Fund Capital Projects budget within the Community Investment Program for Additional Funding for the Sanitary Sewer Master Plan Project.

Prepared By: Michelle Wareing Dept Head Approval: *MWS* City Mgr Approval: *ck*

ISSUE BEFORE THE COUNCIL

Shall the City Council approve Budget Amendment #12 to increase appropriations in the Sanitary Sewer Fund Capital Projects budget for additional funding for the Sanitary Sewer Master Plan project?

STAFF RECOMMENDATION

Staff recommends approval of Budget Amendment #12.

KEY FACTS AND INFORMATION SUMMARY

At the January 23, 2007 Study Session, Council was briefed on the need to sign an intergovernmental agreement (IGA) with Clean Water Services (CWS) for preparation of a Sanitary Sewer Master Plan. CWS is initiating a review and update of its current master plan. The review and update of the CWS master plan provides an opportunity for the City to develop a Sanitary Sewer Master Plan for its sewer collection system as part of that update. This will allow the City to plan for capacity upgrades in those areas that really need them. The Sewer Master Plan is expected to provide a schedule of projects that will meet the needs of the City for the next 20 years.

It is estimated that the City's costs for its Sanitary Sewer Master Plan will be about \$151,000, which includes \$35,000 for CWS to conduct flow monitoring and \$116,000 for the consultant to prepare the plan. These costs will be incurred over two fiscal years, FY 06-07 and FY 07-08. The FY 06-07 Budget includes \$50,000 for the Sanitary Sewer Master Plan. It is estimated that the cost in FY 06-07 will actually be \$85,000.

This budget amendment will transfer \$35,000 from the Sanitary Sewer Fund contingency to the Sanitary Sewer Capital Projects budget. The remaining costs will be included in the FY 07-08 Budget.

OTHER ALTERNATIVES CONSIDERED

Do not approve Budget Amendment #12. The Sanitary Sewer Capital Projects budget may or may not be overspent.

CITY COUNCIL GOALS

None

ATTACHMENT LIST

Resolution including Attachment A.

FISCAL NOTES

This resolution transfers \$35,000 from the Sanitary Sewer Fund Contingency to the Sanitary Sewer Fund Capital Projects budget for the additional funding for the Sanitary Sewer Master Plan project.

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 07-_____

A RESOLUTION APPROVING BUDGET AMENDMENT #12 TO THE FY 2006-07 BUDGET TO INCREASE APPROPRIATIONS IN THE SANITARY SEWER CAPITAL PROJECTS BUDGET WITHIN THE COMMUNITY INVESTMENT PROGRAM FOR ADDITIONAL FUNDING FOR THE SANITARY SEWER MASTER PLAN PROJECT.

WHEREAS, Clean Water Services (CWS) is initiating a review and update of its current master plan; and

WHEREAS, this review provides an opportunity for the City of Tigard to develop a Sanitary Sewer Master Plan for its sewer collection system ; and

WHEREAS, the Sewer Master Plan is expected to provide a schedule of projects that will meet the needs of the City for the next 20 years; and

WHEREAS, at the January 23, 2007 Council study session, Council gave direction to staff to move forward on an intergovernmental agreement between CWS and Tigard for the development of the Sewer Master Plan; and

WHEREAS, it is estimated that the City's total cost will be \$151,000, which will be incurred over two fiscal years, FY 2006-07 and FY 2007-08; and

WHEREAS, the FY 2006-07 Budget includes \$50,000 for the Sewer Master Plan; and

WHEREAS, it is estimated that the cost for the Sewer Master Plan will be \$85,000 in FY 2006-07; and

WHEREAS, it is now necessary to amend the FY 2006-07 Budget to increase appropriations in Sanitary Sewer Fund capital projects to pay for this additional expenditure.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2006-07 Budget is hereby amended as shown in Attachment A to this resolution to transfer \$35,000 from the Sanitary Sewer Fund contingency to the Sanitary Sewer capital projects to pay for the additional expenditures for the Sanitary Sewer Master Plan.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2007.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

Attachment A
FY 2006-07
Budget Amendment # 12

FY 2006-07 Revised Budget	Budget Amendment # 12	Revised Revised Budget
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Sanitary SewerFund

Resources

Beginning Fund Balance	\$7,561,169		\$7,561,169
Utility Fees and Charges	1,392,500		1,392,500
Interest Earnings	125,000		125,000
Other Revenues	(5,000)		(5,000)
Transfers In from Other Funds	0		0
Total Resources	\$9,073,669	\$0	\$9,073,669

Requirements

Public Works Program	890,119		890,119
Program Expenditures Total	\$890,119	\$0	\$890,119
Debt Service	\$0		\$0
Capital Projects	\$2,650,000	\$35,000	\$2,685,000
Transfers to Other Funds	\$429,647		\$429,647
Contingency	\$348,401	(\$35,000)	\$313,401
Total Budget	\$4,318,167	\$0	\$4,318,167
Ending Fund Balance	4,755,502		4,755,502
Total Requirements	\$9,073,669	\$0	\$9,073,669

Agenda Item #
Meeting Date

3.5
February 13, 2007

COUNCIL AGENDA ITEM SUMMARY

City Of Tigard, Oregon

Issue/Agenda Title A resolution to commend the members of the Planned Development Code Review Committee for their service and to disband the committee.

Prepared By: Sean Farrelly Dept Head Approval: TC City Mgr Approval: cl

ISSUE BEFORE THE COUNCIL

Shall the Council approve a resolution to commend the members of the Planned Development Code Review Committee for their many months of service and to disband the committee?

STAFF RECOMMENDATION

Staff recommends adopting the resolution.

KEY FACTS AND INFORMATION SUMMARY

Council established the Planned Development Code Review Committee by resolution in January 2004. The Committee met over the following two years and made final recommendations to revise the code. These recommendations formed the basis for Development Code Amendment 2006-00003. This code amendment was adopted by Council by ordinance on October 24, 2006.

OTHER ALTERNATIVES CONSIDERED

None.

CITY COUNCIL GOALS

Not applicable.

ATTACHMENT LIST

Attachment 1: Resolution.

FISCAL NOTES

Not applicable.

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 07-_____

A RESOLUTION TO COMMEND THE MEMBERS OF THE PLANNED DEVELOPMENT
CODE REVIEW COMMITTEE AND TO DISBAND THE COMMITTEE

WHEREAS, the Tigard City Council established the Planned Development Code Review Committee with Resolution No. 04-08; and

WHEREAS, the Committee was charged with reviewing and possibly recommending changes to the Planned Development Section of the Tigard Community Development Code; and

WHEREAS, the Committee met over two years and recommended changes to the Planned Development Code, which formed the basis for Development Code Amendment 2006-00003, which was adopted by the Tigard City Council by Ordinance No. 06-16; and

WHEREAS, the Committee has successfully completed its task.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The following Planned Development Review Committee members are commended for their outstanding efforts, time commitments and energies in completing their task:
Sue Beilke, Gretchen Buehner, Alice Ellis-Gaut, Ron Ellis-Gaut, John Frewing, Bill McMonagle, Charles Schwarz, and David Walsh.

SECTION 2: The Planned Development Review Committee has successfully completed its task and is hereby disbanded.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2007.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

Agenda Item #
Meeting Date

3.6
February 13, 2007

COUNCIL AGENDA ITEM SUMMARY
City Of Tigard, Oregon

Issue/Agenda Title Authorize the Mayor to Renew a West Nile Virus Intergovernmental Agreement with Washington County

Prepared By: Dennis Koellermeier Dept Head Approval:  City Mgr Approval: 

ISSUE BEFORE THE COUNCIL

Should the Council authorize the Mayor to renew a West Nile Virus Intergovernmental Agreement with Washington County?

STAFF RECOMMENDATION

Staff recommends renewing the agreement.

KEY FACTS AND INFORMATION SUMMARY

West Nile virus (WNV) was found in Washington County in 2006. The virus is spread by infected mosquitoes and, in rare cases, can cause serious health issues. The Washington County Department of Health and Human Services and the City of Tigard have been working together since 2003 and have developed a West Nile Virus Response Plan consisting of education, testing and treatment.

In urban areas, catch basins often provide a breeding ground for the type of mosquitoes that most commonly carry WNV. The City has approximately 1,650 sumped catch basins. These catch basins are designed with a small holding pool or sump where water collects. The sump filters silt and other material from the water, but also creates ideal conditions for mosquito larvae. The best way to eradicate these larvae is to apply a slow-release insecticide targeted at the larval life stage of the mosquito. This type of insecticide is known as a larvicide. Based on sampling and monitoring data from previous years and the effectiveness of the larvicide, Tigard plans to treat sumped catch basins in April and again in August. Treatments will be performed in City and school district catch basins within Tigard.

This intergovernmental agreement (IGA) would enable the City of Tigard and Washington County to continue to work together on WNV monitoring and prevention efforts. If approved, the IGA will be in effect until February 1, 2009.

OTHER ALTERNATIVES CONSIDERED

The Council could elect not to renew this agreement and could give staff direction on how to proceed with WNV monitoring and prevention.

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

None

ATTACHMENT LIST

Intergovernmental Agreement between the City of Tigard and Washington County

Attachment A - Statement of Work/Schedule/Payment Terms Outlining City and County Responsibilities

FISCAL NOTES

As part of the agreement, Washington County will supply the larvicide to treat Tigard's sumped catch basins. This represents a cost savings of approximately \$5,000. The City will use existing personnel and equipment to perform the work, which will cost an estimated \$15,000 in FY 06/07.

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Washington County, a political subdivision of the State of Oregon, and the City of Tigard.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.

Now, therefore, the parties agree as follows:

- 1) The effective date is: February 1, 2007, or upon final signature, whichever is later.

The expiration date is: February 1, 2009; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) To the extent applicable, the provisions of ORS 279B.220 through ORS 279B.235 and ORS 279C.500 through 279C.870 are incorporated by this reference as though fully set forth.
- 5) Each party is an independent contractor with regard to each other party(s) and agrees that the performing party has no control over the work and the manner in which it is performed. No party is an agent or employee of any other.
- 6) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 7) This Agreement may be terminated, with or without cause and at any time, by a party by providing _____ (30 if not otherwise marked) days written notice of intent to the other party(s).
- 8) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 9) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 10) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

- 11) Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- 12) Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
- 13) This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor.
- 14) This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

Jurisdiction

Signature

Date

Printed Name

Title

Address: _____

WASHINGTON COUNTY:

Signature

Date

Printed Name

Title

Address:

155 N First
Mail Stop # 5
Hillsboro, OR 97124

ATTACHMENT A

Statement of Work /Schedule/Payment Terms

County's Responsibilities:

1. The County shall coordinate efforts to meet the goals of the State Health Service's West Nile Virus (WNV) response plan.
2. The County shall coordinate public education related to matters of public health and human behavior related to vector-borne disease throughout Washington County.
3. The County shall work with state and local health, veterinarian, agricultural, and wildlife organizations to survey and track human, equine, and avian cases of WNV.
4. The County shall alert those subject to this Intergovernmental Agreement of confirmed WNV cases.
5. The County shall employ a Mosquito Control Coordinator to design and develop a sampling program and train City staff on mosquito sampling procedures.
6. The County shall establish a schedule for City staff to submit larval and adult mosquito samples. The County Mosquito Control Coordinator shall process and track larvae and adult mosquito samples collected by City staff.
7. The County shall provide larvicide product to the City to treat publicly owned sumped catch basins under city control.
8. Based on surveillance information collected from the City, the County will identify habitats based on risk and advise the City on appropriate control measures and control schedules.
9. The County shall maintain a database of all treated sumped catch basin and aquatic habitats based on information provided by the City.
10. The County shall maintain a database mapping complaints, surveillance findings and mosquito control work.

CITY RESPONSIBILITIES

1. The City shall utilize and distribute public education materials provided by the County and Clean Water Services (CWS), in order to maintain a consistent regional communication strategy.
2. The City shall actively educate neighborhood associations, community participation organizations, and other citizen groups, and encourage private property source reduction efforts and other personal behaviors that will reduce risk of exposure.
3. The City shall report bird and mosquito complaints that it receives to the County.
4. The City shall, in cooperation with CWS, identify locations of storm water facilities and aquatic features that may produce mosquitoes and provide that information to the County to integrate with the County's complaint and surveillance information.
5. The City shall provide the county Mosquito Control Coordinator with information for the County to design, develop and conduct a regional larval and adult mosquito sampling regime that will include representative catch basins, storm water facilities, and natural wetlands within the City's existing water quality sampling area throughout the mosquito season (March through October).
6. The City shall deliver larval and adult mosquito samples to the County Mosquito Control Coordinator for processing and tracking on the schedule established by the County.

ATTACHMENT A

Statement of Work /Schedule/Payment Terms

7. The City shall implement mosquito control measures as recommended by the County for sites under the control of the City.
8. The City shall maintain catch basins and storm water facilities to limit the presence of standing water and decaying organic debris (particularly dead cattails and grass clippings). The City shall install habitat features as appropriate to promote amphibian, bird, and predatory insect (dragonfly) populations that feed on mosquito larva.
9. The City shall treat all publicly owned sumped catch basins with larvicide twice a year, with each treatment no more than three months apart, between May 1st and August 31st. The City will provide the County with monthly reports of areas treated. The weekly report will include treatment areas, dates and applicator name(s) as well as indicate locations of new catch basins.
10. The City will implement other mosquito control tasks based on public health risk as determined by the County. In the event the City is unable to implement mosquito control tasks in a timely manner the City will notify the County and request assistance.
11. The City will report product treatments to the Oregon Department of Agriculture following Pesticide Use Reporting System guidelines by January 31st of the year following the treatment.

Unless otherwise specified herein, the parties agree that there will be no monetary compensation paid to the other, that each shall bear their own costs and that reasonable and beneficial consideration exists to support this agreement.

Agenda Item #
Meeting Date

3.7
February 13, 2007

COUNCIL AGENDA ITEM SUMMARY
City Of Tigard, Oregon

Issue/Agenda Title Settlement agreement between the Business Software Alliance and the City of Tigard

Prepared By: Robert Sesnon Dept Head Approval:  City Mgr Approval: 

ISSUE BEFORE THE COUNCIL

Shall the City Council approve the settlement agreement between the Business Software Alliance (BSA) and the City of Tigard?

STAFF RECOMMENDATION

Staff recommends that City Council approve the settlement agreement.

KEY FACTS AND INFORMATION SUMMARY

- The City of Tigard received a letter in mid-August 2006 from the law firm of Donahue Gallagher Woods, LLP, representing the Business Software Alliance (BSA) stating that they had been advised that the City had installed on its computers more copies of software from Adobe Systems, Inc. and Autodesk, Inc. than it was licensed to use. The letter requested that the City conduct an investigation of this matter.
- In response to the letter, the City proceeded to license a software audit program in order to determine exactly what programs were installed on city-owned computers. This audit was completed and it was discovered that many of the programs were old versions of the software and/or were no longer in use.
- Invoices providing proof of purchase of the Adobe Systems and Autodesk products were, to the greatest extent possible, located and copied. Invoices older than three years had previously been destroyed as part of the City's normal records retention procedures. Had these invoices been available the City would have been able to provide proof of purchase for more licenses.
- The invoices were compared against the license counts. Proof of purchase could not be documented for exactly 100 Adobe Systems licenses and 9 Autodesk licenses.
- The City's attorney negotiated the attached settlement agreement with BSA that includes updating internal City procedures for software purchase record keeping, the removal of all unnecessary old versions of software not used by the City, the purchase of any necessary software licenses, and payment of \$75,494 in penalties. The penalty amount was calculated using 1.25 times the cost of the software, although it could have been as high as 2 times the cost of the software.
- All unlicensed Adobe Systems and Autodesk programs have been removed from city computers. In some cases, functionality was still required to create PDF documents (which Adobe Acrobat performed). In these instances a freeware product was installed to satisfy this need.

OTHER ALTERNATIVES CONSIDERED

None.

CITY COUNCIL GOALS

None

ATTACHMENT LIST

Settlement agreement between the Business Software Alliance and the City of Tigard.

FISCAL NOTES

The agreement calls for a settlement payment of \$75,493.75 which was calculated as 1.25 times the cost of the software. This amount will be charged against the Information Technology budget in the Central Services Fund.

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SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into between the Business Software Alliance (the "BSA"), and the City of Tigard, a municipal corporation ("the City"), as of the date signed by the City (the "Effective Date").

WHEREAS:

A. The BSA is a trade association representing software publishers in the business of developing and marketing a variety of computer software products. Those software publishers are Adobe Systems Incorporated (including Macromedia, Inc.), Apple Computer, Inc., Autodesk, Inc., Avid Technology, Inc., Bentley Systems, Inc., Borland Software Corporation, CNC Software, Inc., The MathWorks, Inc. McAfee, Inc., Parametric Technology Corporation, Solidworks Corporation, Sybase, Inc., and UGS Corporation. Software published by these entities are referred to in this agreement as (the "Computer Software Products");

B. A dispute has arisen regarding the City's alleged unauthorized copying or use of certain of the Computer Software Products in the course of its business; and

C. The BSA and the City have reached an agreement resolving that dispute and wish to evidence that agreement in writing.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the BSA and the City agree as follows:

1. COMPLIANCE

1.1 Certification of Audit Results. The City warrants and represents that the software audit results provided to the BSA during negotiation of this settlement are a true, accurate and complete list of all copies of all Computer Software Products that were installed on the City's computers as of November 3, 2006. The City further warrants and represents that it did not intentionally remove any software from its computers between August 14, 2006 and November 3, 2006, did not authorize the removal of any software from its computers during that time period and that it is unaware of any unintentional removal of any software during that time period.

1.2 Certification of Compliance. Not later than thirty (30) days after the Effective Date, the City shall ensure that all copies of all Computer Software Products installed, used or operated on its computers are licensed to the City and utilized solely in accordance with their licenses. Not later than forty-five (45) days after the Effective Date, the City shall deliver to Donahue Gallagher Woods LLP ("BSA's Attorneys") a certification in the form of Exhibit A that the obligations of this paragraph have been met.

1.3 Schedules. The City shall attach to the certification required by Section 1.2 the following schedules:

- a. a list identifying each Computer Software Product that was destroyed pursuant to Section 1.2, and the number of copies destroyed;
- b. a list identifying all Computer Software Products, including version number, purchased by the City since August 14, 2006, the quantity of licenses for each Computer Software Product purchased, the dates of the purchases, and the price paid; and
- c. copies of receipts or invoices reflecting proof of each purchase listed in Section 1.3(b).

1.4 Warranty of Continued Compliance. The City warrants that all copies of Computer Software Products coming into its possession or under its control in the future will be licensed to the City and installed and utilized solely in accordance with the Computer Software Products' respective licenses.

1.5 Software Code of Ethics. City staff shall recommend to City Council adoption of a revision to Personnel Policy 49.0 to include the language shown in Exhibit B, incorporated by reference. Within forty-five (45) days of the Effective Date, the City shall administratively adopt a software policy substantially in the form of Exhibit B. The City shall deliver a copy of the administratively adopted software personnel policy to the BSA's Attorneys, with a certification of its administrative adoption. The City shall also provide a certification of the revisions to Personnel Policy 49.0 if and when adopted by the Council. The policy shall be distributed to all of the City's employees and/or personnel. The City shall provide a copy of the policy to all new employees at the commencement of their employment.

1.6 Inspections. For three (3) years following the Effective Date, the City shall permit the BSA, at the BSA's option and expense, to conduct two (2) inspections per year of the City's computers at each of the City's offices or locations to confirm the absence of infringing Computer Software Products. The BSA agrees to provide one (1) week's notice of any such inspection and to conduct any inspection in a manner designed to minimize any disruption to the City's business activities. Notice is to be directed to Robert Sesnon, Director of Financial and Information Services, City of Tigard, 13125 SW Hall Boulevard, Tigard, OR 97223, telephone (503) 639-4171, e-mail bobs@tigard-or.gov. In the event the BSA discovers unlicensed Computer Software Products during an inspection, the City shall reimburse the BSA for the cost of the inspection. The City agrees that this cost reimbursement shall be separate from and in addition to any damages or costs for which the City may be liable under the Copyright Act as a result of any infringement discovered during an inspection.

2. RESOLUTION OF LIABILITY

2.1 Settlement Payment. Upon the City's execution of this Agreement, the City shall pay to the BSA the sum of Seventy-five Thousand Four Hundred Ninety-three Dollars and Seventy-five Cents (\$75,493.75). This payment shall be in the form of a check payable to the "Business Software Alliance" and shall be delivered to the BSA's Attorneys with the executed Agreement. Delivery shall be made by overnight delivery/courier service.

2.2 Release. Through the BSA, Adobe Systems, Inc., a Delaware corporation and Autodesk, Inc., a Delaware corporation, each hereby releases and forever discharges the City, its officers, directors, employees, shareholders, attorneys and assigns from any and all claims, demands, causes of action, actions and costs relating to the alleged infringement of the copyrights in the Computer Software Products listed below due to the installation or use of the Computer Software Products at the City, occurring before the thirty-first (31st) day following the Effective Date: Adobe® Acrobat® 5.0 software, Adobe® Acrobat® 6.0 Professional software, Adobe® Illustrator® 10.0 software, Adobe® Illustrator® 11.0 software, Adobe® PageMaker® 7.0 software, Adobe® PhotoDeluxe® software, Adobe® Photoshop® 7.0 software, and Autodesk® AutoCAD® 2002 software; provided, however, that this release is conditioned on the accuracy of the representations and the performance of the obligations listed in Sections 1.1, 1.2, 1.3, 1.5, and 2.1 of this Agreement. In no event shall this release extend to any claim that the City has engaged in the unauthorized sale, transfer, or distribution of any computer software product to any person or entity not related to the City or that the City has created, transferred or distributed any derivative work(s) based upon or incorporating any computer software product, or part thereof.

3. MISCELLANEOUS

3.1 Entire Agreement. This Agreement and its attachments set forth the entire agreement of the BSA and the City. No amendment may be made to this Agreement unless it is in writing and signed by both parties.

3.2 Attorney's Fees. In the event that legal action is brought to enforce the terms of this Agreement, the prevailing party in any such legal action or proceeding shall be entitled, in addition to any other rights and remedies it may have, to an award of the costs of the action, including an award of court costs, actual attorney's fees and experts' fees.

3.3 Severability. In the event any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force.

3.4 Binding Agreement. The terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, assigns and transferees.

3.5 BSA Warranty. The BSA warrants that it is fully authorized to make this Agreement on behalf of Adobe Systems, Inc. and Autodesk, Inc. and to bind all of them to the terms hereof.

IN WITNESS WHEREOF, the BSA and the City have executed this Agreement as of the date written below.

CITY OF TIGARD

By: _____

Name: Craig Prosser
Title: City Manager
Date: February 13, 2007

BUSINESS SOFTWARE ALLIANCE

By: _____

Robert W. Holleyman, II
President
Date: _____

EXHIBIT A

CERTIFICATE OF COMPLIANCE OF
CITY OF TIGARD

I, _____, am the _____ of City of Tigard ("the City") and am authorized to provide this certificate.

As of _____, 2007, (30 days following the Effective Date of the Settlement Agreement dated _____, 2007 between the Business Software Alliance and the City (the "Agreement")), I hereby certify that:

a. all Computer Software Products installed on the City's computers for which the City does not have a license have been destroyed;

b. any licenses necessary to ensure that all remaining copies of Computer Software Products are licensed have been acquired; and

c. all Computer Software Products installed on the City's computers are utilized solely in accordance with their licenses.

I further certify that attached hereto as Schedule 1 is a list of the Computer Software Products destroyed as certified in paragraph (a) above; attached hereto as Schedule 2 is a list of the Computer Software Products purchased by the City since August 14, 2006, the quantity of the licenses for the Computer Software Product purchased, the dates of the purchases, and the price paid; and attached hereto as Schedule 3 are copies of receipts or invoices as proof of the purchases described in Schedule 2.

I declare under penalty of perjury under the laws of the State/Commonwealth of _____ and the United States that the foregoing is true and correct.

Executed this _____ day of _____, 2007, at _____.

By: _____
(Name) _____
(Title) _____

SCHEDULE 1

Software Product

Number Destroyed

Date Destroyed

SCHEDULE 2

Software Product

Number Purchased

Date Purchased

Price Paid

SCHEDULE 3

[Copies of receipts or other proof of software purchase(s) attached]

EXHIBIT B

Section 49.0 Electronic Communication ~ Excerpt **Subsection Laws and Licenses Compliance**

Users are required to comply with all software licenses, copyright laws, Oregon Government Standards and Practices Commission's guidelines, City policies, and state and federal laws when using the City's computers, sending or receiving e-mail or accessing or downloading information from the Internet.

Unauthorized duplication of copyrighted computer software violates the law and is contrary the City's standards of conduct. Employees will not engage in nor make or use unauthorized software copies under any circumstances. Legally acquired software in sufficient quantities for all computers will be provided by the City's Information Technology Division to meet the legitimate software needs for City work. The City and its employees will comply with all license and purchase terms regulating the use of any software acquired or used.

Because copyright infringement is an unlawful act, the City will maintain strong internal controls to prevent the making or using of unauthorized software copies. Compliance with software licenses and copyright laws is required. Failure to comply with these standards shall be grounds for disciplinary action, up to and including termination.

CITY OF TIGARD

By: _____
Name: _____
Title: _____

Dated: _____, 2007

Agenda Item No. 4
Meeting Date: February 13, 2007

COUNCIL AGENDA ITEM SUMMARY
City Of Tigard, Oregon

Issue/Agenda Title Annexation Policy Discussion

Prepared By: Ron Bunch Dept Head Approval: TC/jle City Mgr Approval: CP

ISSUE BEFORE THE COUNCIL

Review current annexation policy established in January 2006.

STAFF RECOMMENDATION

Adopt staff's recommendation to continue the current policy with possible modifications, and initiate amendment to a key Comprehensive Plan Policy to remove ambiguity to ensure annexation is mandated when City services are required.

KEY FACTS AND INFORMATION SUMMARY

At a January 17, 2006 workshop, Council considered four annexation policy options and agreed that the City should have a "reactive" policy that established neutral position towards annexation. The City neither promotes nor is negative towards annexation. Applications are processed when they are received.

The Bull Mountain annexation/incorporation issue will have effects on local annexation matters for the foreseeable future and aggressive or overtly proactive annexation approaches could be counter-productive.

The City will be updating its Comprehensive Plan Policies pertaining to urbanization. Future discussion of annexation issues is recommended when this work is completed. However, a key Plan Policy (10.2.1) is so ambiguous that it has caused problems and is recommended for amendment in the near future.

OTHER ALTERNATIVES CONSIDERED

The same four policy alternatives were considered as were in January 2006. They are aggressive, proactive, reactive and inactive approaches. Due to the status of the Bull Mountain annexation issue, the reactive or neutral position is recommended over the aggressive and proactive options. The inactive approach is also not recommended. Council did not consider this a valid option in 2006. There is the potential for negative consequences if the City is not involved in planning and service decisions within its Urban Services Area.

CITY COUNCIL GOALS

Clarify City's Position on the Provision of Urban Services to Unincorporated Areas and in the Best Interests of the Citizens of the Tigard.

ATTACHMENT LIST

- Attachment 1: Staff's January 5, 2007 memorandum
Attachment 2: January 3, 2006 Staff memorandum to Mayor Dirksen and City Council regarding "City of Tigard Annexation Policy"
Attachment 3: January 17, 2006 City Council workshop minutes on "City of Tigard Annexation Policy"
-

FISCAL NOTES

Not Applicable



MEMORANDUM

TO: Mayor Craig Dirksen and Members of the City Council

FROM: Ron Bunch, Long Range Planning Manager

RE: January 5, 2007

DATE: City of Tigard Annexation Policy

INTRODUCTION

On January 17, 2006 Council held a work-session on annexation policy issues. At this meeting Council considered four policy alternatives: aggressive, proactive, reactive, or inactive approaches towards annexation. Council decided that the “reactive” approach was best.

Pursuant to this direction, the City has neither been negative towards annexation nor promoted it. Rather it has processed annexation applications as they have occurred. However, to lessen the burden on applicants, Council waived annexation fees for the period July 1, 2006 to July 1, 2008.

This workshop meeting is a follow-up to last year’s decision. Council has the opportunity to discuss whether it should affirm or change its annexation policy.

This memorandum presents policy alternatives in the same format as was done in January 2006. Council’s options are not limited to the four alternatives. It may decide that current circumstances require a hybrid approach -- combining elements of two or more options.

Staff’s January 17, 2006 memo to City Council provided an in-depth evaluation of the legal framework of annexation; City policy framework and a description of options. For Council’s reference, the memo is attached along with minutes of its January 17, 2006 meeting

BACKGROUND / DISCUSSION - 2007 ANNEXATION POLICY

Policy Alternatives Previously Considered

At its January 2006 discussion, Council considered the following four annexation policy alternatives.

Aggressive: Develop a strategic plan to annex all of the City's Urban Service Area including Planning Areas 63 and 64.

This alternative called for developing a strategic plan that mapped out annexation of all of Tigard's Urban Service Area. It would have aggressively invited property owners to participate and drawn annexation boundaries to include lands necessary to achieve the plan's goals. This would have included using cherry stem annexations along key roads to annex non-contiguous parcels. Also involuntary annexation would have been used for all parcels that would not participate when invited. This strategy would also have sought annexation of unincorporated islands within the City.

Proactive: Actively seek property owners who wish to annex.

This option would have actively invited property owners to annex to the City. It would have also involved the use of involuntary annexation, when permitted by state law, for all parcels whose owners declined to participate in an annexation action. Involuntary annexation would also have been used to annex unincorporated islands inside the City.

Reactive: Respond to property owner or elector interest.

As stated above, this is the City's current practice. The City responds to requests for annexation, and observes its policy that if development needs City services, then annexation must occur or a waiver of remonstrance must be signed and filed with Washington County.

Inactive: No further annexation of Tigard's Urban Service Area.

This alternative would have halted the City's annexation of territory and no City services would have been extended beyond the City limits. Other service providers would have had responsibility to serve lands within Tigard's Urban Service Area.

Annexation Policy Options for 2007

The incidents preceding the Bull Mountain incorporation ballot measure and its subsequent failure were the most significant annexation events in 2006. This issue and its various effects will color the annexation discussion for some time to come. For example, the Bull Mountain episode resulted in termination of the City / County Urban Services Intergovernmental Agreement (USIGA) whereby Washington County is now responsible for providing development review and building inspection services in the Bull Mountain Urban Services Area.

However, since there is not an incorporated city in the area, the prospect for annexation has not changed. Simply put, if new or existing development needs City services it must annex to the City. Furthermore, the City's Urban Planning Area Agreement does not prevent these or other lands from annexing. It still states that the City and County will be supportive of annexation of the area.

The controversy brought about by the Bull Mountain Incorporation issue seems to counter either an aggressive or an overtly proactive annexation policy. Also, it is staff's opinion that the City's Comprehensive Planning effort needs to address policy issues related to the urban services and urban planning areas before a major policy change is considered. Staff recommends that additional discussion of annexation policy occur when updated Comprehensive Plan Urbanization goals, policies and action measures are brought forward. In other words, an ongoing discussion of annexation issues and policies is needed as events occur and circumstances change.

RECOMMENDATIONS

Recommendation 1

Staff recommends Council's current policy of reacting to annexation requests when they occur be continued for another 12 months along with continuing the waiver of annexation fees until 7-01-08. Council may wish to add on some proactive elements such as an incentive of phasing in, over a period of five years, the added amount of City property taxes associated with annexation. If wished, staff will further investigate this and other proactive alternatives.

Recommendation 2

Staff also recommends that Council amend Comprehensive Plan Policy 10.2.1. pertaining to annexation and City services. The policy has caused problems because:

- It is not explicit regarding the obligation of property owners to annex in order to receive City services. Staff's opinion is that the policy can be interpreted that an application for annexation is all that is needed to get City services;
- Legal precedent does not allow a city to condition annexation on the receipt of another entity's services. For example, the City cannot require annexation if sewer service is provided by Clean Water Services, and
- There is uncertainty whether waivers of remonstrance to annex can actually be enforced.

Staff also recommends some minor edits to further clarify the intent of the policy.

Therefore the policy is proposed to be amended as follows. **Bold** indicates new language and ~~Strike through~~ indicates language to be deleted.

Policy 10.2.1

*The City shall not approve the extension of City ~~or Unified Sewerage Agency lines~~ **services** except:*

- a) **Where applications for annexation for those properties have been submitted to the approved by the City; or***
- b) ~~Where a non-remonstrance agreement to annex those properties has been signed and recorded with Washington County and submitted to the City; or~~*
- e) b) **In circumstances where applicable state ~~or~~ and county health ~~agency~~ **agencies** ~~has~~ **have** declared a potential or imminent health hazard.***

In the future, there may be more recommendations for policy changes. These will be forthcoming as the work progresses on the Comprehensive Plan.

Attachments:

January 3, 2006 Staff memorandum to Mayor Dirksen and City Council regarding "City of Tigard Annexation Policy"

January 17, 2006 City Council workshop minutes on "City of Tigard Annexation Policy"

File: Annex memo1-16-07 final doc

MEMORANDUM

CITY OF TIGARD

TO: Mayor Dirksen and City Council

FROM: Tom Coffee, Community Development Director
Gary Pagenstecher, Associate Planner

DATE: January 3, 2006

SUBJECT: City Of Tigard Annexation Policy

INTRODUCTION

The purpose of this memo is to address the City's limited annexation policy and to propose options for the Council to consider to facilitate implementation of the City's urbanization goal. This paper looks briefly at the legal framework of annexation and summarizes the City's current policies and practices. A discussion of the issues follows with options proposed for how the City might proceed.

As the City urbanizes and expands into its Urban Services Area, annexation is used to incorporate territory into the City to ensure the efficient provision of municipal services and to incorporate urbanizing lands into the City's political and civic life. The City's annexation policy is included within the Urbanization goal of its Comprehensive Plan, which is mandated by State Statute. The Urbanization goal provides a framework within which all development activities are coordinated. The goal attempts to integrate and balance available land resources in terms of the needs expressed by other goals, namely, Housing, Economy, Public Facilities and Services, Natural Features and Open Space, and Transportation.

LEGAL FRAMEWORK

State Law (ORS 195 and 222)

ORS195 provides for annexation plans for large unincorporated areas which must be approved by a majority of the voters in the areas to be annexed and the city annexing the area. ORS 222 provides for annexations without a vote through consent agreements from those within the area to be annexed when contiguous to a city boundary.

Annexations without a vote, include: a) island annexation when territory is surrounded by the corporate boundaries of the city; consent of the affected property owners is not required; b) consents of all of the owners of land in the territory and not less than 50 percent of the electors; c) consents of owners of the majority of the territory within the area to be annexed and a majority

of electors (double majority); d) consents of more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory, representing more than half of the assessed value (triple majority).

2005 Legislative Changes to State Law

The 2005 Legislature made a number of changes to State Annexation Law in response to property owner concern over the authority of cities to annex territory. Annexation by Annexation Plans now clearly require a majority vote of both residents of the city and the residents within the territory to be annexed. The so called "Nike" bill only applies to specific industrial properties that meet specific criteria (does not affect City of Tigard where the unannexed portions of the city contain only land designated residential). In addition, the legislature took away a city's ability to veto the incorporation of territory within three miles of city boundaries.

Written Consents to Annex

The procedures for annexing without a vote include obtaining: a) written consent to annex by a willing property owner, which is non transferable and valid for one year; or, b) written consent to annex by a willing property owner by contract in exchange for provision of services, which is binding on future property owners and good for a year (unless separate agreement waives the year limitation).

When property owners contiguous to the city boundary apply for annexations, simple consents are sufficient. When property owners apply for development of property within the Urban Services Area, but which is not contiguous to the current city boundary, contracts and waivers are used to ensure annexation at some point in the future when the city boundary becomes contiguous (see attached 12-13-05 Ramis/Crew Annexation Consents Memo). These consents are made to fulfill the intent of the City's urbanization goal. The attached letter from Legislative Counsel to Representative Jerry Krummel, dated December 15, 2005, points out that these written consents are a legitimate form of annexation (paragraph 2, page 3).

EXISTING CITY POLICY

The City's policies on annexation are found in the Comprehensive Plan and are implemented through the Tigard Development Code and ordinances approving several Intergovernmental Agreements. These IGAs are primarily between the City and Washington County, but also include Metro and a number of area service provider districts.

Comprehensive Plan

Chapter 10 of the Comprehensive Plan (attached) includes the findings, policies and implementation strategies that address a variety of topics related to urbanization, including annexation. The annexation policies describe the process which satisfies the need for efficient, orderly and logical urbanization within the geographical limits of Tigard's Urban Service Area (attached map). These policies, summarized below, include 1) the conditions for annexation, 2) extension of services outside the City limits, and 3) annexation of land outside of the urban growth boundary. The Comprehensive Plan was adopted by ordinance and is the law of the City just as other laws of the municipal code.

In Policy 10.1, prior to annexation, the city must demonstrate that there are adequate water, sewer, drainage, streets, police, and fire protection services to serve the territory to be annexed

and that the annexation will not significantly reduce the level of services available to developed and undeveloped land within the city of Tigard. In addition, the City must find that the annexation eliminates an island or will not create an irregular boundary, the police department has commented, the land is located within the Tigard urban planning area and is contiguous to the city boundary, and the annexation can be accommodated by the listed services.

In Policy 10.2, the city shall not approve the extension of city or CWS sewer lines except: a) where applications for annexation for those properties have been submitted to the city; b) where a nonremonstrance agreement to annex those properties has been signed and recorded with Washington County and submitted to the city; or c) where the applicable state or county health agency has declared that there is a potential or imminent health hazard.

In Policy 10.3, the city shall consider annexation requests outside the Tigard urban planning area and within the urban growth boundary consistent with policies 10.1 and 10.2 and amendment of the agreement between the city and the county. The city shall discourage expansion of the Tigard urban planning area in a manner which would result in an irregular planning area and inefficient provision of public facilities and services.

Tigard Development Code

The TDC implements the policies in the Comprehensive Plan, stipulating a Type IV approval process and approval criteria that a) require services and facilities are available to the area with sufficient capacity to provide service for the proposed annexation area, and b) that the applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Intergovernmental Agreements

A series of IGAs from the mid-eighties between the City and Washington County have set the management terms for the unincorporated territory within Tigard's UGB regarding provision of urban services and the transfer of service provision upon annexation. The most recent of these agreements, the Urban Planning Area Agreement (7/8/04), identifies the Tigard Urban Service Area (TUSA) and a process for coordinating comprehensive planning and development. Section III.C.1 *Annexations*, states:

The county and city recognize the City as the ultimate service provider of the urban services specified in the Tigard Urban Services Agreement. The County also recognizes the City as the ultimate local governance provider to all the territory in the TUSA, including unincorporated properties. So that all properties within the TUSA will be served by the City, the County and City will be supportive of annexations to the City.

Section III.C.3 states:

... Annexations to the City ... shall not be limited to an annexation plan and the City and County recognize the right of the City and property owners to annex properties using the other provisions provided by the Oregon Revised Statutes.

Administrative Policy

Currently, the City does not initiate annexations, but processes requests for annexation by developers and property owners pursuant to the provisions in the Tigard Development Code.

However, the City's administrative policy includes sending a letter solicitation to owners in the vicinity of a proposed annexation to join in the annexation. The intent of the solicitation is to create a uniform boundary by including adjacent properties within the proposal to create a more efficient urban services area boundary. The City encourages participation by offering to waive the annexation application fee, which is currently \$2,302. The City also advises that if an owner chooses not to participate, but a majority of the surrounding neighbors do choose to do so, their property may involuntarily be annexed by double or triple majority. Involuntary annexation has rarely, if ever, occurred.

ANNEXATION POLICY OPTIONS

The City does not have an annexation plan to guide the timing and location of annexation of Tigard's Urban Service Area as called for in the City's Urban Service Agreement (11-26-02). The Comprehensive Plan policies provide for, but do not facilitate annexation. Therefore, the City is currently reactive to annexation proposals by developers and landowners. As a result the City is unable to predictably assume its role as the urban service provider within its Urban Service Area.

The following four options lay out a graduated approach to annexation for the Council to consider. The options range from the City annexing all of its Urban Service Area to declaring that it will not annex any more territory beyond specified limits (see attached Prospective Annexation Map). Underlying these options is the legal justification cited above for the City to annex all of its Urban Service Area.

Aggressive: Develop a strategic plan to annex all of the City's Urban Service Area including Planning Areas 63 and 64.

Develop a strategic plan that maps out annexation of all of Tigard's Urban Service Area. As now, rely on consents to annex and waivers of remonstrance for proposed developments. However, be aggressive with the invitations to participate by drawing the rational boundary to include parcels necessary to achieve the annexation goal. If necessary, use cherry stem annexations along key roads to include non contiguous properties. Use involuntary annexation, as allowed, for all parcels that do not participate on invitation. Annex all seven unincorporated islands within the City boundary comprised of 74 lots and totaling 42.4 acres (see attached December 2005 Issue of League of Oregon Cities *Local Focus*, pages 27/28).

Proactive: Actively seek property owners who wish to annex.

As now, rely on consents to annex and waivers of remonstrance for proposed developments. However, be proactive with the invitations to participate by drawing the rational service boundary to include a larger territory. Use involuntary annexation, as allowed, for all parcels that do not participate on invitation. Annex all islands.

Reactive: Respond to property owner or elector interest.

As now, rely on consents to annex and waivers of remonstrance for proposed developments. Continue invitations to participate and include those consenting to annexation. To the extent annexation occurs, urban services would be provided to those seeking them. Only approximately 212 acres have been added since 2000 using the current policy.

Inactive: No further annexation of Tigard's Urban Service Area.

The area would continue to be served by existing service provider districts. The City would concede the Urban Service Area to other interests and revoke its urban service agreements with the County. The City could focus on developing a sustainable community with an enhanced quality of life within its current boundaries.

APPENDICIES

December 15, 2005, Letter from Legislative Counsel to Representative Jerry Krummel

Chapter 10, Urbanization, City of Tigard Comprehensive Plan

December 2005, Local Focus (LOC), Island Annexations Lawful Under Equal Protection Clause

Exhibits: maps showing Annexation History and Prospective Annexation policy options

Agenda Item No. 3.1
 For Agenda of 2-28-06



Tigard City Council Meeting Minutes

Date: January 17, 2006
 Time: 6:36 p.m.
 Place: Tigard City Hall, 13125 SW Hall Boulevard
 Tigard, Oregon
 Attending: Mayor Craig Dirksen Presiding
 Councilor Sally Harding
 Councilor Sydney Sherwood
 Councilor Nick Wilson
 Councilor Tom Woodruff

Agenda Item	Discussion & Comments	Action Items (follow up)
Workshop Meeting	<p>1.1 Mayor Dirksen called the City Council and the Local Contract Review Board to Order at 6:36 p.m.</p> <p>1.2 Council Present: Mayor Dirksen, Councilors Harding, Sherwood, Wilson, and Woodruff.</p> <p>1.3 Pledge of Allegiance</p> <p>1.4 Council Communications & Liaison Reports:</p> <p>Councilor Sherwood announced that some public facilities projects will be funded by the Community Development Block Grant program. Requests for funding from this program far exceeded the amount available. She advised that the Garrett Street sidewalk will be funded.</p> <p>1.5 Call to Council and Staff for Non-Agenda Items</p> <p>An Executive Session was held at the end of the meeting.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> • A review of TriMet's proposed station design option. • A review of the recommendation of the design as originally proposed by the Downtown Task Force. • TriMet now scaling back to a lower-cost prefabricated station structure to realign estimated costs and budget. As time goes by, costs escalate, which impacts what can be done with the available funding. • Review of aesthetics and available budget. • Review of commuter rail passenger comfort: benches, windscreens for protection from weather, and length of wait between trains. • TriMet's shelter design is basically a "cover." • Disappointment expressed with the reduction from the original design proposed by the Downtown Task Force. • The station is the initial project to improve the downtown, so it is important to set the tone and demonstrate the types of improvements desired. • Discussed projected commuter rail ridership. • Viewpoint expressed that the shelter design will not keep people from riding the commuter rail; keep the station functional and fund less costly aesthetic improvements. • Of the \$150,000 currently allocated for the downtown, \$75,000 has been earmarked by the City for the station. 	<p>could be expanded later. Tigard contributions to station funding will need to be available the latter part of 2007.</p>
4. Annexation Policy	<p>The following staff members participated in this discussion with the City Council: Interim Community Development Director Coffee, Planning Manager Bewersdorff, and Associate Planner Pagenstecher.</p> <p>Discussion highlights included the following:</p> <ul style="list-style-type: none"> • Overview of annexation background with previous stance by Washington County that cities should provide urban services and that the City of Tigard would expand into its urban service area. • Factors affecting annexation: 	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> ○ Comprehensive Plan ○ Intergovernmental agreements with Washington County ○ State law ○ City of Tigard Development Code ○ Consents to annexation ○ Current administrative policy ○ Bull Mountain annexation vote in 2004. • Referenced two letters received from State Representative Jerry Krummel; evaluation is needed. • Reviewed options of City Council (see January 3, 2006 memorandum from Interim Community Development Director Coffee and Associate Planner Pagenstecher regarding City of Tigard annexation policy). Options were for the City of Tigard to be 1) aggressive, 2) proactive, 3) reactive, or 4) inactive. • Areas in unincorporated county that are already developed have no incentives to annex. • The City of Tigard currently annexes in the "reactive" mode; if the City continues this policy, it is unlikely the City's boundaries will ever extend to the urban services boundary. • If the City chooses a proactive policy, State law allows the City to annex islands. Initiating island annexations has not been the practice of the City. • An aggressive annexation policy, including cherry-stem annexations is not politically palatable. • A suggestion was made that the City consider its boundaries to be essentially set. • The Comprehensive Plan update is now underway. Boundaries will be a consideration. • An observation was made that it is a struggle to quantify the alternatives for annexation options. If a new City is formed on Bull Mountain – a real City that is self-sustaining with services such as a library and parks – there would be less concern. Also unknown is whether the new City would extend to the urban growth boundary. • There are positives for each of the annexation policy options. In the long-term view, the question is which is the correct decision? There was concern expressed that development might 	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>occur that will prove to be detrimental.</p> <ul style="list-style-type: none"> • There was no support expressed for cherry-stem annexations (aggressive policy) in order to facilitate potential annexation of areas 63 and 64. • The proactive annexation policy appears to be beneficial in that it would bring undeveloped parcels into the City. • A decision should be made about the City's planning area relating to the Comprehensive Plan update. It was suggested that the City plan for undeveloped areas so if these areas come into the City, the planning would be done. • Density requirements in the urban growth boundary would be no different whether the property is in or out of the City. If the property was located in the City, density could be transferred to the downtown or the Washington Square areas. • There was mention of a policy decision that would be needed on property owned outside the City (Cache Creek property). Options would include: 1) keep the area as an extra-territorial park, 2) sell the property, 3) give the property to another city. • It was noted that the Tigard constituency does not appear to support aggressive or even proactive annexations. Tigard citizens appear to be more in favor with what the City is doing now, which is a reactive policy (wait for parcels to ask to be annexed). • Interim Community Development Director Coffee suggested a systematic review of the City's boundary. • Mayor Dirksen said he supports double or triple majority annexations. • Councilor Woodruff supported the democratic process of annexing those properties where property owners have indicated they want to come into the City. • Councilor Harding suggested the City take a time out and let others explore their options. If a property owner asks to be annexed and if the property is contiguous to the current City boundaries, then she would support the annexation request. 	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> • The Comprehensive Plan, Washington County intergovernmental agreements, and the Bull Mountain Community Plan all indicate that the City of Tigard should be the ultimate service provider for the urban services area. • There was a suggestion that it might be time to review the Washington County intergovernmental agreements. In response to the discussion, City Manager Prosser advised the funds received by the City from the County cover the costs of the services provided by the City as outlined in the intergovernmental agreements. • It was suggested that the City Council would know more in about a year, once it is known whether a new city will be formed on Bull Mountain. • Councilor Wilson pointed out that the vision established 30 years ago regarding urban services does not appear to have any possibility of working. • Interim Community Development Director Coffee suggested that Goal 14 will be addressed during the Comprehensive Plan review; the "mechanisms" have not happened. Tigard's area of interest may be redefined. The current practice for annexation will continue. • The City Council talked of annexation incentives. There was no support at this time to offer a phase-in of taxes; however, the City Council might consider waiving the fee for annexation. 	
	<p>Meeting recessed: 9:26 p.m. Meeting reconvened: 9:35 p.m.</p>	
<p>5. Mayor and Council Budget</p>	<p>Assistant to the City Manager Newton reviewed with the City Council the preliminary Mayor and Council FY 06-07 Budget request as prepared by Administration Department staff.</p> <p>There was discussion about the majority of the League of Oregon Cities dues being shown as an expenditure in the Council's budget.</p>	<p>Staff will prepare a cost allocation model for League of Oregon Cities dues.</p>